

(24,540)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 337.

HARRY F. HILL, A MINOR, AND J. B. HILL, A MINOR, BY  
THEIR NEXT FRIEND AND LEGAL GUARDIAN, DAVE  
HILL, AND LOUIS JAMES, BY HIS LEGAL GUARDIAN,  
PLAINTIFFS IN ERROR,

vs.

FRANK REYNOLDS, A MINOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

INDEX.

	Original.	Print
erk's return to writ of error.....	a	1
'tation and service.....	1	1
etition for writ of error and allowance.....	3	2
signment of errors.....	5	3
idavit as to amount involved.....	8	5
Writ of error.....	9	5
Supersedas order .....	11	6
Supersedas bond .....	12	7
Petition in error of Frank Reynolds <i>et al.</i> .....	14	8
Ethel A. Reynolds <i>et al.</i> .....	16	9
Willie Reynolds .....	18	10
Seldon Reynolds <i>et al.</i> .....	20	12
Frank Reynolds <i>et al.</i> .....	22	13
Index to case-made.....	24	14

	Original.	Print
Case-made from superior court of Grady county.....	26	16
Petition .....	27	17
Exhibits—Chickasaw allotment contest blanks.....	35	22
Statement of record by commission.....	37	24
Findings of fact and conclusions of law by commission....	46	29
Judgment of commission.....	52	32
Communication, Larrabee, acting commissioner, to commis- sioner of five civilized tribes.....	54	34
Decision of Interior Department on review.....	66	41
Statement of Mr. Bond, counsel for contestants.....	85	53
Statement of Mr. Bailey, counsel for contestees.....	86	53
Testimony of Dave Hill .....	88	54
James H. Tuttle.....	90	62
George Ladd .....	119	74
J. W. Blassingame.....	123	77
Frank W. Plato.....	141	88
W. D. Bailey.....	150	94
Charles O. Reynolds.....	155	97
R. Bond .....	159	100
James H. Tuttle (recalled).....	163	102
Geo. Ladd .....	166	104
H. D. Cloud.....	168	105
C. E. Atkinson.....	170	106
Mrs. Sallie L. Minter.....	172	108
Certificate of acting commissioner to papers, etc.....	183	115
Letter, Ryan, first acting secretary, to Commissioner of Indian Affairs, February 6, 1907.....	184	115
Letter, Woodruff, acting secretary, to Commissioner of In- dian Affairs, August 21, 1907.....	186	116
Letter, Hauke, second assistant commissioner, to commis- sioner to the five civilized tribes, May 11, 1911.....	194	120
Exhibit 1—Decision of Interior Department on review....	195	121
Precept for summons.....	214	132
Summons and sheriff's return.....	216	132
Demurrer .....	219	134
Ruling on demurrer.....	220	134
Motion for appointment of guardian <i>ad litem</i> .....	222	135
Order appointing guardian <i>ad litem</i> .....	224	135
Answer of guardian <i>ad litem</i> .....	226	136
Answer .....	228	137
Order appointing receiver.....	231	138
Bond and oath of receiver.....	234	136
Trial .....	237	141
Offers of evidence.....	237	141
Exhibit D—Will of C. L. Campbell and certificate of probate, etc.....	240	142
Offer of exhibits.....	245	145
Certificate of acting commissioner.....	247	146
Exhibit E—Quit-claim deed, Campbell to Hill, Novem- ber 18, 1902.....	248	146
F—Quit-claim deed, Campbell to Hill, Decem- ber 24, 1902.....	250	147



# INDEX.

iii

Original. Print

Exhibit G—Quit-claim deed, Campbell to Blassingame, January 21, 1899.....	253	148
H—Quit-claim deed, Blassingame to Brimage, December 10, 1902.....	256	149
I—Quit-claim deed, Blassingame to Brimage, December 10, 1902.....	259	150
J and J'—Testimony of Charles A. Reynolds before department .....	262	152
Judgment .....	277	158
Motion for a new trial.....	280	160
Order overruling motion for a new trial, etc.....	282	161
Motion to extend time, etc.....	285	162
Agreement, etc., as to case-made.....	287	163
Reporter's certificates .....	290	164
Service of case-made.....	293	166
Clerk's certificate .....	295	167
Order settling case-made.....	297	168
Stipulation as to case-made.....	299	169
Judge's certificate to case-made.....	300	170
Journal entry advancing cause.....	302	170
Journal entry continuing cause.....	303	170
Journal entry continuing cause.....	304	171
Motion to correct case-made.....	305	171
Stipulation to correct case-made.....	307	172
Exhibit K—Amended complaint.....	308	173
Homestead patent No. 16752.....	310	174
No. 18633.....	311	176
No. 18632.....	312	177
No. 20043.....	313	178
Allotment patent No. 19340.....	314	180
Judgment .....	315	181
M—Writ of possession and return.....	316	183
N—Complaint in ejectment.....	318	184
Exhibit A—Quit-claim deed, Tuttle, etc., to Hill, November 18, 1902.....	321	186
Court's instructions to jury.....	324	187
Journal entry: Oral argument and submission.....	329	190
Journal entry of judgment.....	330	190
Opinion, Turner, J.....	331	191
Order staying mandate.....	339	196
Petition for rehearing.....	340	196
Reply to petition for rehearing.....	347	200
Journal entry denying petition for rehearing.....	352	203
Order staying mandate.....	353	203
Certificate of clerk.....	354	203



a In the Supreme Court of the State of Oklahoma.

No. 5135, with Which is Consolidated Nos. 5136, 5137, 5138, and 5139.

FRANK REYNOLDS, a Minor, etc., Plaintiff in Error,

vs.

HARRY F. HILL, a Minor, etc., Defendant in Error.

*Clerk's Return to Writ of Error.*

In obedience to the command of the within writ of error, I herewith Transmit to the Supreme Court of the United States the duly certified transcript of the record, the opinion and the proceedings of the within entitled cause, and all the things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of the State of Oklahoma this 13th day of Jan'y, 1915.

[Seal Supreme Court, State of Oklahoma.]

WILLIAM M. FRANKLIN,

*Clerk of the Supreme Court of Oklahoma.*

1 Filed Dec. 18, 1914. William M. Franklin, Clerk.

UNITED STATES OF AMERICA:

FRANK REYNOLDS, a Minor, etc., Plaintiff in Error,

vs.

HARRY F. HILL, a Minor, etc., Defendant in Error.

*Citation.*

To the above named Defendants in Error, Greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, thirty days from the date after this 18 day of Dec. 1914, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Oklahoma, wherein you are defendant in error, and Frank Reynolds, a Minor, etc., are Plaintiffs in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned should not be corrected, and speedy justice should not be done the parties in that behalf.

Witness the Honorable John B. Turner, Acting Chief Justice,

of the Supreme Court of the State of Oklahoma, this 18 day of Dec 1914.

JOHN B. TURNER,  
*Vice Chief Justice.*

2 Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,  
*Clerk of the Supreme Court,*  
By JESSIE PARDOE, *Deputy.*

Service of the foregoing citation is hereby accepted.  
This 19th day Dec. 1914.

F. E. RIDDLE,  
*Att'y for Def'ts in Error.*  
HARRY HAMMERLY,  
*Att'y for Minors and Guardian ad Litem.*

Filed Dec. 18, 1914. William M. Franklin, Clerk.

3 Filed Dec. 17, 1914. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5135, with Which is Consolidated Nos. 5136, 5137, 5138 and 5139.

FRANK REYNOLDS, a Minor, Etc., Plaintiff in Error,  
vs.  
HARRY F. HILL, a Minor, Etc., Defendant in Error.

*Petition for Writ of Error.*

Harry F. Hill, a Minor and J. B. Hill, a Minor by their next friend and legal guardian, Dave Hill, and Louis James, by his legal guardian, defendants in error in the above entitled causes, having been ag-grieved by the decision and judgment of the court rendered hereon, on the 13 day of Oct. 1914, Come now by Bond and Melton and C. B. Stuart, their attorneys, of record herein, and petition the court for an order allowing the defendants in error to prosecute a writ of error to the Honorable Supreme Court of the United States under and according to the rules of the United States in that behalf made and provided, and have an order that all other proceedings herein be suspended and stayed until the determination of the said Writ of Error by the Supreme Court of the United States.

Petitioners respectfully state to the Court that a federal question is presented by the record in this case, as will more fully appear from the assignments of error filed herein setting up in detail such federal question.

4

C. B. STUART,  
BOND & MELTON,  
*Att'ys for Petitioners.*

Allowed Dec. 17, 1914. Bond fixed at \$1000.

JOHN B. TURNER,  
*Vice Chief Justice.*

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,  
*Clerk Supreme Court,*

By JESSIE PARDOE, *Deputy.*

Filed Dec. 17, 1914. William M. Franklin, Clerk.

5 Filed Dec. 17, 1914. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5135, with Which is Consolidated Nos. 5136, 5137, 5138 and  
5139.

FRANK REYNOLDS, a Minor, Etc., Plaintiff in Error,  
vs.

HARRY F. HILL, a Minor, Etc., Defendant in Error.

*Assignment of Errors.*

Now come Harry F. Hill, a Minor, and J. B. Hill, a Minor, by their next friend and legal Guardian, Dave Hill, and Louis James, by his legal Guardian, Defendants in Error in the above entitled cause, and say that in the record and proceedings in the above entitled cause, there is manifest error in this to-wit:

I.

The Supreme Court of the State of Oklahoma committed error in reversing judgment of the Superior Court of Grady County and in rendering judgment against the Defendants in Error, and in favor of the Plaintiffs in Error.

II.

6 The Supreme Court of the State of Oklahoma committed error in holding that the claim or right of the Minor Heirs of C. L. Campbell, deceased, under the acts of Congress of the 28 day of June 1898 and July, 1902, were, and had been abandoned by the Guardian of the Minors.

III.

The Supreme Court of the State of Oklahoma committed error in denying to defendants in error the right and title set up and claimed by defendants in error under the acts of Congress of June 28th, 1898,

and September 25th, 1902, known as the Atoka Agreement and the Supplemental Agreement thereto.

#### IV.

The Supreme Court of the State of Oklahoma erred in holding that the act of Congress of June 28th, 1898, providing that after the passage of that act, the laws of the various tribes or nations of Indians should not be enforced at law or in equity by the Courts of the United States or in the Indian Territory.

And, the section in the same act providing that all tribal courts in the Indian Territory should be abolished applied to the Chickasaw Tribe of Indians where the lands sought to be allotted in this case is located.

#### V.

The Supreme Court of the State of Oklahoma erred in holding that the will of C. L. Campbell, deceased, which was the paper title upon which the defendants in error relied, should not be  
7 considered in the determination of the case, and in holding that said will was of no force and effect as a muniment of title, because its probate was unauthorized and void by virtue of the provisions of the acts of Congress, set out in the fourth assignment.

#### VI.

The Supreme Court of the State of Oklahoma erred in not holding that the will of C. L. Campbell aforesaid, was duly probated was the common source of title to all the parties of this litigation and was admissible in evidence.

#### VII.

The Supreme Court of the State of Oklahoma erred in not holding that under the Atoka Agreement aforesaid; and the Supplemental Agreement thereto, these defendants in error were entitled to allot the land in controversy under and by virtue of said acts of Congress under which the defendants in error claim and set up their rights to the allotment in controversy.

Wherefore the said Plaintiffs in Error pray that the Judgment of the Supreme Court of Oklahoma be reversed and that judgment be rendered for the plaintiffs in error as prayed in their petition.

C. B. STUART,  
BOND & MELTON,

*Attorneys for Plaintiff in Error.*

8

Filed Dec. 19, 1914. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5135.

FRANK REYNOLDS, a Minor, Plaintiff in Error,

vs.

HARRY F. HILL, a Minor, Defendant in Error.

*Affidavit.*

Alger Melton of lawful age on oath states that he is one of the attorneys of record of Harry F. Hill, a minor, defendant in error in the above entitled cause, and the amount in controversy in said cause, exclusive of interest and costs exceeds \$5,000.00.

ALGER MELTON.

Subscribed and sworn to before me this the 18th day of December, 1914.

[Seal of H. W. Cabeen, Notary Public, Grady County, Okla.]

H. W. CABEEN,  
Notary Public.

My commission expires Jan. 6th, 1918.

UNITED STATES OF AMERICA:

Filed Dec. 19, 1914. William M. Franklin, Clerk.

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Oklahoma, Greetings:

Because in the record and proceedings and also in the condition of the judgment of a plea, which is in the said Supreme Court of the State of Oklahoma, before you, or some of you, by the highest court of law or equity of the State, in which a decision could be had in the said suit between Frank Reynolds, a Minor, etc., Plaintiffs in error and Harry F. Hill and J. B. Hill, by their next friend and legal guardian, Dave Hill, and Louis James, by his legal Guardian, Defendants in error, wherein was drawn in question the construction of a statute of the United States and the decision was against the right, title, privilege or exemption specially set-up or claimed under such statute, a manifest error has happened to the great damage of Harry F. Hill, a Minor, and J. B. Hill, a Minor, by their next friend and legal Guardian, Dave Hill, and Louis James by his Legal Guardian, as by their complaint appears.

We being willing that error, if any hath been, should be fully corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to

the Supreme Court of the United States together with this writ so that you have the same at Washington on the 18 day of Jany., 1915.  
 10 in the said Supreme — to be then and there held that the record and proceeding aforesaid, being inspected, the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States this 18 day of Dec., 1914.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,  
*Clerk of the District Court of the United States,  
 for the Western District of Oklahoma.*

Allowed by

JOHN B. TURNER,  
*Acting Chief Justice of the  
 Supreme Court of Oklahoma.*

11 Filed Dec. 18, 1914. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. —

FRANK REYNOLDS, a Minor, etc., Plaintiff in Error,  
 vs.  
 HARRY F. HILL, a Minor, etc., Defendant in Error.

*Supersedeas Order.*

This cause coming on to be heard on this 18th day of December, 1914, upon the application of defendant in error for a writ of error, to the Supreme Court of the United States, and an order supersedeas and the same having been duly considered it is hereby ordered that the application for supersedeas to be in the same is hereby allowed, and the judgment of the said Supreme Court of the State of Oklahoma is hereby suspended and the Clerk of the said Court is hereby directed to stay the mandate of the Supreme Court to the District Court of Grady County, until the decision of the Supreme Court of the United States to the said writ of error and the further order of this court.

JOHN B. TURNER,  
*Vice Chief Justice.*

Attest:

[SEAL.] WM. M. FRANKLIN, *Clerk,*  
 By JESSIE PARDOE, *Deputy.*



12 Filed Dec. 19, 1914. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5135, with which is Consolidated Nos. 5136, 5137, 5138 and 5139.

FRANK REYNOLDS, a Minor, et al., Plaintiffs in Error,

vs.

HARRY F. HILL, a Minor, et al., Defendants in Error.

*Supersedeas Bond.*

Whereas the above named defendants in error Harry F. Hill, a minor, J. B. Hill, a minor, and Lewis James, a minor, by their next friend and guardian *has* prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oklahoma which writ of error has been allowed by the Supreme Court of the State of Oklahoma, and a supersedeas bond fixed in the sum of \$1,000.00 by the order of said Court.

Now, therefore, we, Harry F. Hill, a minor, J. B. Hill, a minor, and Lewis James, a minor, by their next friend and guardian, principal, and Dave Hill, Ed. F. Johns, and C. R. Phillips, sureties, are held and firmly bound unto Frank Reynolds, Ethel Reynolds and Selden Reynolds, plaintiffs in error, in the sum of \$1,000.00 to be paid to said obligees, their successors, representatives and assigns, and for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. The condition of this obligation is such that if the above named plaintiffs in error shall prosecute their said writ of error to effect, answer all costs and damages if they fail to make good in their plea, then this obligation shall be void; otherwise to remain in full force and effect.

13 Signed and dated this the 18th day of December, 1914.

HARRY F. HILL,

J. B. HILL AND

LEWIS JAMES, *Minors,*

By C. B. STUART AND

BOND & MELTON & MELTON,

*Their Attorneys of Record.*

DAVE HILL,

ED. F. JOHNS,

C. R. PHILLIPS,

*Sureties.*

I hereby approve the foregoing bond and sureties thereon this the 19th day of December, 1914.

JOHN B. TURNER,  
*Vice-Chief Justice.*

Attest:

[SEAL.] WM. M. FRANKLIN, *Clerk,*  
By JESSIE PARDOE, *Deputy.*

14 Filed May 19, 1913. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5135.

FRANK REYNOLDS, a Minor, Suing by and Through His Legal Guardian, C. A. Reynolds, and Harry Hammerly, Guardian Ad Litem, Plaintiffs in Error,

VS.

HARRY F. HILL, a Minor, and His Next Friend and Legal Guardian, Dave Hill, Defendants in Error.

*Petition in Error.*

The said Frank Reynolds, and C. A. Reynolds, his legal guardian, and Harry Hammerly, Guardian Ad Litem, plaintiffs in error, complaining of said Harry F. Hill, a minor and his next friend and guardian, Dave Hill, defendants in error, in that the said defendant in error at the March 1913 term of the Superior Court sitting within and for Grady County, Oklahoma, recovered a judgment, by the consideration of said court, against the said Frank Reynolds, and his legal guardian, C. A. Reynolds, and the guardian ad litem, Harry Hammerly, plaintiffs in error, in a certain action then pending in said court, wherein the said Harry F. Hill, by his next friend and legal guardian, Dave Hill, was plaintiff, and the said Frank Reynolds and his legal guardian, C. A. Reynolds, and Harry Hammerly, Guardian Ad Litem, were defendants. The original case made, duly certified and attested, is hereto attached, marked "Exhibit A" and made a part of this petition in error.

And the said Frank Reynolds, and his legal guardian C. A. Reynolds, and the said Harry Hammerly, Guardian Ad Litem, aver that there are errors in said record and proceedings, in this to-wit:

15 First. That the trial court erred in rendering judgment against said plaintiffs in error and in favor of the defendant in error.

Second. That the trial court erred in admitting and considering certain testimony offered on the part of the defendant in error.

Third. The trial court erred in not dismissing the petition of defendant in error and in not rendering judgment in favor of the plaintiffs in error.

Fourth. The trial court erred in cancelling the patents of the plaintiff in error and in decreeing and adjudging said plaintiff in error holding the legal title to said land in trust for the defendant in error.

Fifth. The trial court erred in holding that the Land Department and the Secretary of the Interior committed error of law and gross error of fact in the final decision awarding said land in controversy to the plaintiff in error.

Sixth. The trial court erred in overruling the motion of the plaintiff in error for a new trial.

Wherefore, plaintiff in error pray- that said judgment so rendered may be reversed, set aside and held for naught, and that a judgment be rendered in favor of the plaintiff in error, Frank Reynolds, decreeing and adjudging him to be the legal and equitable owner of the land in controversy, and directing and ordering the petition of the defendant in error to be dismissed; and prays that in the event the Court does not deem it proper to render a judgment in this court, that said judgment and decision of the trial court be reversed and remanded to proceed in accordance with the judgment and opinion of this court; and will ever pray.

F. E. RIDDLE,  
*Attorney for Plaintiff in Error.*  
HARRY HAMMERLY,  
*Guardian Ad Litem.*

16 Filed May 19, 1913. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5136.

ETHEL A. REYNOLDS, a Minor, Suing by and through Her Legal Guardian, C. A. Reynolds, and Harry Hammerly, Guardian Ad Litem, Plaintiffs in Error,

vs.

LOUIS JAMES, by His Legal Guardian, Dave Hill, Defendants in Error.

*Petition in Error.*

The said Ethel A. Reynolds, and C. A. Reynolds, her legal guardian, and Harry Hammerly, Guardian Ad Litem, plaintiffs in error, complaining of said Louis James, and his next friend and legal guardian, Dave Hill, defendants in error, in that the said defendant in error at the March 1913 term of the Supreme Court sitting within and for Grady County, Oklahoma, recovered a judgment, by the consideration of said court, against the said Ethel A. Reynolds, and her legal guardian, C. A. Reynolds, and the Guardian Ad Litem, Harry Hammerly, plaintiffs in error, in a certain action then pending in said court wherein the said Louis James, by his next friend and legal guardian, Dave Hill, was plaintiff, and the said Ethel A. Reynolds and her legal guardian, C. A. Reynolds, and Harry Hammerly, Guardian Ad Litem, were defendants. The original case made, duly certified and attested, is hereto attached, marked "Exhibit A" and made a part of this petition in error.

17 And the said Ethel A. Reynolds, and her legal guardian, C. A. Reynolds, and the said Harry Hammerly, Guardian Ad Litem aver that there are errors in said record and proceedings, in this to-wit:

First. That the trial court erred in rendering judgment against said plaintiffs in error and in favor of the defendant in error.

Second. That the trial court erred in admitting and considering certain testimony offered on the part of the defendant in error.

Third. The trial court erred in not dismissing the petition of the defendant in error and in not rendering judgment in favor of the plaintiffs in error.

Fourth. The trial court erred in cancelling the patents of the plaintiff in error and in decreeing and adjudging said plaintiff in error holding the legal title to said land in trust for the defendant in error.

Fifth. The trial court erred in holding that the Land Department and the Secretary of the Interior committed error of law and gross error of fact in the final decision awarding said land in controversy to the plaintiff in error.

Sixth. The trial court erred in overruling the motion of the plaintiff in error for a new trial.

Wherefore, plaintiff in error pray- that said judgment so rendered may be reversed, set aside and held for naught, and that a judgment be rendered in favor of the plaintiff in error, Ethel A. Reynolds, decreeing and adjudging her to be the legal and equitable owner of the land in controversy, and directing and ordering the petition of the defendant in error to be dismissed; and prays that in the event the Court does not deem it proper to render a judgment in this court, that said judgment and decision of the trial court be reversed and remanded to proceed in accordance with the judgment and opinion of this court; and will ever pray.

F. E. RIDDLE,  
*Attorney for Plaintiff in Error.*  
HARRY HAMMERLY,  
*Guardian Ad Litem.*

18 Filed May 19, 1913. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5137.

WILLIE REYNOLDS, Plaintiff in Error,

vs.

J. B. HILL, by and Through His Next Friend and Legal Guardian,  
Dave Hill, Defendant in Error.

*Petition in Error.*

The said Willie Reynolds, Plaintiff in error, complaining of said J. B. Hill and his next friend and legal guardian, Dave Hill, defendants in error, in that the said defendants in error at the March 1913 term of the Superior Court sitting within and for Grady County, Oklahoma, recovered a judgment, by the consideration of said court,

against the said Willie Reynolds, plaintiff in error, in a certain action then pending in said court wherein the said J. B. Hill, by his next friend and legal guardian, Dave Hill, was plaintiff, and the said Willie Reynolds was defendant. The original case made, duly certified and attested, is hereto attached, marked "Exhibit A" and made a part of this petition in error.

And the said Willie Reynolds avers that there are errors in said record and proceedings, in this, to-wit:

First. That the trial court erred in rendering judgment against said plaintiff in error and in favor of the defendant in error.

Second. That the trial court erred in admitting and considering certain testimony offered on the part of the defendant in error.

Third. That the trial court erred in not dismissing the petition of the defendant in error and in not rendering judgment in favor of the plaintiff in error.

19 Fourth. The trial court erred in cancelling the patents of the plaintiff in error and in decreeing and adjudging said plaintiff in error holding the legal title to said land in trust for the defendant in error.

Fifth. The trial court erred in holding that the Land Department and the Secretary of the Interior committed error of law and gross error of fact in the final decision awarding said land in controversy to the plaintiff in error.

Sixth. The trial court erred in overruling the motion of the plaintiff in error for a new trial.

Wherefore, plaintiff in error prays that said judgment so rendered may be reversed, set aside and held for naught, and that a judgment be rendered in favor of the plaintiff in error. Willie Reynolds, decreeing and adjudging him to be legal and equitable owner of the land in controversy, and directing and ordering the petition of defendant in error to be dismissed; and prays that in the event the Court does not deem it proper to render a judgment in this court, that said judgment and decision of the trial court be reversed and remanded to proceed in accordance with the judgment and opinion of this court and will ever pray.

F. E. RIDDLE,

*Attorney for Plaintiff in Error.*

20 Filed May 19, 1913. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5138.

SELDON REYNOLDS, a Minor, Suing by and through His Legal Guardian, C. A. Reynolds, and Harry Hammerly, Guardian Ad Litem, Plaintiffs in Error,

vs.

LEWIS JAMES, a Minor, by His Legal Guardian, Dave Hill, Defendants in Error.

*Petition in Error.*

The said Seldon Reynolds, and C. A. Reynolds, his legal guardian, and Harry Hammerly, Guardian Ad Litem, plaintiffs in error, complaining of Lewis James, a minor, and his next friend and guardian, Dave Hill, defendants in error, in that the said defendant in error at the March 1913 term of the Superior Court sitting within and for Grady County, Oklahoma, recovered a judgment, by the consideration of said court, against the said Seldon Reynolds, and his legal guardian, C. A. Reynolds, and the Guardian Ad Litem, Harry Hammerly, plaintiffs in error, in a certain action then pending in said court, wherein the said Lewis James, by his next friend and legal guardian, Dave Hill, was plaintiff, and the said Seldon Reynolds, and his legal guardian, C. A. Reynolds and Harry Hammerly, Guardian Ad Litem, were defendants. The original case-made, duly certified and attested, is hereto attached, marked "Exhibit A" and made a part of this petition in error.

And the said Seldon Reynolds, and his legal guardian, C. A. Reynolds, and the said Harry Hammerly, Guardian Ad Litem, aver that there are errors in said record and proceedings, in this, to-wit:

21 First. That the trial court erred in rendering judgment against said plaintiffs in error and in favor of the defendant in error.

Second. That the trial court erred in admitting and considering certain testimony offered on the part of the defendant in error.

Third. The trial court erred in not dismissing the petition of the defendant in error and in not rendering judgment in favor of the plaintiff in error.

Fourth. The trial court erred in cancelling the patents of the plaintiff in error and in decreeing and adjudging said plaintiff in error holding the legal title to said land in trust for the defendant in error.

Fifth. The trial court erred in holding that the Land Department and the Secretary of the Interior committed error of law and gross error of fact in the final decision awarding said land in controversy to the plaintiff in error.

Sirth. The trial court erred in overruling the motion of the plaintiff in error for a new trial.

Wherefore, Plaintiff in error pray- tha said judgment so rendered may be reversed, set aside and held for naught, and that a judgment be rendered in favor of the plaintiff in error, Seldon Reynolds, decreeing and adjudging him to be the legal and equitable owner of the land in controversy, and directing and ordering the petition of the defendant in error to be dismissed; and prays that in the event the Court does not deem it proper to render a judgment in this Court, that said judgment and decision of the trial court be reversed and remanded to proceed in accordance with the judgment and opinion of this court; and will ever pray.

F. E. RIDDLE,  
*Attorney for Plaintiff in Error.*  
HARRY HAMMERLY,  
*Guardian ad Litem.*

22 Filed May 19, 1913. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5139.

FRANK REYNOLDS, by and through His Legal Guardian, C. A. Reynolds, and Harry Hammerly, Guardian Ad Litem, Plaintiffs in Error,

vs.

J. B. HILL, by and through His Next Friend, Dave Hill and Legal Guardian, Defendants in Error.

*Petition in Error.*

The said Frank Reynolds, and C. A. Reynolds, his legal guardian, and Harry Hammerly, Guardian Ad Litem, plaintiffs in error, complaining of J. B. Hill, a minor, and his next friend, Dave Hill, defendants in error, in that the said defendants in error at the March 1913 term of the Superior Court within and for Grady County, Oklahoma, recovered a judgment, by the consideration of said court, against the said Frank Reynolds, and his legal guardian, C. A. Reynolds, and the Guardian Ad Litem, Harry Hammerly, in a certain action then pending in said court, wherein the said J. B. Hill by his next friend and legal guardian, Dave Hill was plaintiff, and the said Frank Reynolds and his legal guardian C. A. Reynolds, and Harry Hammerly, Guardian Ad Litem, were defendants. The original case made, duly certified and attested, is hereto attached, marked "Exhibit A" and made a part of this petition in error.

And the said Frank Reynolds, and his legal guardian, C. A. Reynolds, and the said Harry Hammerly, Guardian Ad Litem, aver that there are errors in said record and proceedings, in this, to-wit:



23 First. That the trial court erred in rendering judgment against said plaintiffs in error and in favor of the defendant in error.

Second. That the trial court erred in admitting and considering certain testimony offered on the part of the defendant in error.

Third. The trial court erred in not dismissing the petition of the defendant in error and in not rendering judgment in favor of the plaintiff in error.

Fourth. The trial court erred in cancelling the patents of the plaintiff in error and in decreeing and adjudging said plaintiff in error holding the legal title to said land in trust for the defendant in error.

Fifth. The trial court erred in holding that the Land Department and the Secretary of the Interior committed error of law and gross error of fact in the final decision awarding said land in controversy to the plaintiff in error.

Sixth. The trial court erred in overruling the motion of the plaintiff in error for a new trial.

Wherefore, the plaintiff in error prays that said judgment so rendered may be reversed, set aside and held for naught, and that a judgment be rendered in favor of the plaintiff in error, Frank Reynolds, decreeing and adjudging him to be the legal and equitable owner of the land in controversy, and directing and ordering the petition of the defendant in error to be dismissed; and prays that in the event the Court does not deem it proper to render a judgment in this court, that said judgment and decision of the trial court be reversed and remanded to proceed in accordance with the judgment and opinion of this court; and will ever pray.

F. E. RIDDLE,

*Attorney for Plaintiffs in Error.*

HARRY HAMMERLY,

*Guardian ad Litem.*

Appearances .....	2
Filing of case .....	3
Petition .....	4
Præcipe for summons .....	189-B
Summons .....	189-D
Demurrer .....	189-G
Ruling on demurrer .....	190
Motion for appointment guardian ad litem .....	192
Order appointing guardian ad litem .....	194
Answer of guardian ad litem .....	196
Answer of defendant .....	198
Order appointing receiver .....	217
Bond of receiver .....	220
Agreement of counsel consolidating cases .....	223
Case called for trial .....	222



*Evidence Introduced on Behalf of Plaintiff.*

Petition pages — to — and exhibits — to "O" inclusive....	226
Plaintiff closes .....	263
Order to pay receiver's fees.....	265
Judgment .....	267
Motion for new trial .....	270
Journal entry overruling motion for new trial and extension of time .....	272
Motion for extension of time .....	275
Recital .....	276
Affidavit of reporter .....	277
Certificate of reporter .....	279
Clerk's certificate .....	280
Acceptance of service and amendments.....	281
Stipulation of counsel .....	282
Judge's certificate .....	283

Filed April 19, 1913. W. L. Melton, Clerk Superior Court.

Filed Apr. 21, 1913. S. L. Newman, Clerk District Court, Grady  
County, Okla.

25 In the Supreme Court of the State of Oklahoma.

Appealed from the Superior Court Within and for the County of  
Grady, State of Oklahoma.

FRANK REYNOLDS and HARRY HAMMERLY, His Guardian Ad  
Litem, Defendant Below, Plaintiffs in Error,

vs.

HARRY HILL, a Minor, Suing by His Next Friend and Natural  
Guardian, Dave Hill, Plaintiff Below, Defendant in Error.

Nature of Cause: Suit for Possession of Land.

Appearances:

For plaintiff below: Bond & Melton & Stewart, Cruce & Gilbert.  
For defendant below: F. E. Riddle & Harry Hammerly.

Before Hon. Will Linn, Judge.

*Case-Made.*

G. U. McKinney, Reporter.

26 In the Superior Court within and for Grady County, State  
of Oklahoma.

No. 399.

HARRY F. HILL, a Minor, Suing by His Next Friend and Natural  
Guardian, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, a Minor, Defendant.

*Case-Made.*

Be it remembered, that heretofore, to-wit on the 12th day of  
March, 1912, the plaintiff commenced this action against the de-  
fendant herein, by filing in the Superior Court within and for Grady  
County, State of Oklahoma, his petition, which said petition was in  
words and figures as follows, to-wit:

G. U. McKinney, Reporter.

27 (Filed April 19, 1913. W. L. Melton, Clerk of Superior Court.)

In the Superior Court Within and for Grady County, State of Oklahoma.

No. 399.

HARRY F. HILL, a Minor, Suing by Next Friend and Natural Guardian, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, a Minor, Defendant.

*Petition.*

The plaintiff suing by his next friend and natural guardian, Dave Hill, represents that he is a minor, a member of the Choctaw Tribe of Indians by blood and entitled to an allotment as such, and that Dave Hill is his father and natural guardian. For cause of action against the defendant the plaintiff alleges and states.

I.

That on July 13, 1903, Charles A. Reynolds appeared at the Chickasaw Land Office and made application under the act of Congress commonly known as the Choctaw-Chickasaw supplemental Agreement, for the north half of the south east quarter of section thirty-two, township seven north, range six west, together with other lands as the allotment selection for his minor son, Frank Reynolds, and same was by the commission to the Five Civilized Tribes set apart to said minor as a portion of his allotment selection.

II.

That thereafter on August the 13th, 1903, Nellie B. Hill appeared at the Chickasaw Land Office and made application under said Supplementary Agreement to have said land set apart to her  
28 minor son, Harry F. Hill as a portion of his allotment selection and the same having been heretofore selected as herein stated said commission refused to allow said application.

III.

That on September 26th, 1903, Harry F. Hill by his mother Nellie B. Hill, filed at the Chickasaw Land Office his complaint alleging that said lands were improved and under cultivation and that he was the owner of the improvements thereon and entitled to select and file on same as a part of his allotment. A copy of said contest complaint is hereto attached and made a part hereof and marked Exhibit A.

Q 227

## IV.

That on April 27th, 1904, said allotment contest was called for trial and on the following day thereafter said trial was concluded and taken under advisement by said commission and that thereafter on January the 3rd 1905 said commission rendered its decision in said contest case awarding said lands to said Harry F. Hill. A copy of said decision is hereto attached and made a part hereof and marked "Exhibit B."

## V.

That on February, the 8th, 1905, the contestee filed an appeal to the Commissioner of Indian Affairs and on December 11th, 1906, said acting commissioner of Indian Affairs rendered his decision in said contest case affirming the decision of said commission theretofore rendered. A copy of said decision is hereto attached, and made a part hereof and marked Exhibit "C."

29

## VI.

That an appeal was taken from the decision of the Commissioner of Indian Affairs to the Secretary of the Interior and that on February 6th, 1907, the Secretary of the Interior affirmed the decision of the Commissioner of Indian Affairs awarding said land to the said Harry F. Hill and that thereafter patents were issued to the said Harry F. Hill to said land. Copies of said patents and said decision are hereto attached and marked Exhibits "D" and E. F." That thereafter a motion for rehearing and a review was filed before the Secretary of the Interior and on a hearing thereof the acting secretary attempted to recall and vacate the departmental decision of February 6th, 1907, and the former decision of the Commissioner of Indian Affairs and the Commissioner to the Five Civilized Tribes and that after rendering said opinion the Acting Secretary recommended that the Department of Justice institute suit to cancel said patents, that jurisdiction might be restored, and that thereafter the United States filed suit to cancel same, and that thereafter by agreement with the Department said patents were surrendered to the Department for cancellation with the understanding that said Harry F. Hill, contestant, should have a hearing before the department and that thereafter the acting Secretary of the Interior rendered his decision awarding said lands to said Frank Reynolds. A copy of said decision is hereto attached and made a part hereof and marked "Exhibit F." That thereafter the contestant by his attorneys filed a motion for rehearing and review, which motion the department refused to hear or entertain. A copy of the decision of the Department refusing to hear said motion is hereto attached and made a part hereof and marked "Exhibit G."

## VIII.

30      The department in rendering its decision of May the 9th, 1911, awarding the lands in controversy to the contestee committed gross mistake of fact in the following findings, to wit:

## I.

The department erred in its decision of May the 9th, 1911 in finding as a fact that Blassengame conveyed the land involved to Brimage prior to the time Blassengame was denied citizenship by the judgment of the Choctaw-Chickasaw Citizenship Court on December 17th, 1902, and that subsequent to that time Brimage, who was a citizen of the Choctaw Nation conveyed the land to Reynolds.

## II.

The department in its decision of May the 9th, 1911, erred in holding as a fact that there was nothing in the record to show that C. L. Campbell was a citizen by intermarriage of the Chickasaw Nation.

## III.

The department erred in its decision of May the 9th 1911, in finding as a fact that the lands involved in said contest were not a part of the home place.

## IV.

The Department erred in its decision of May the 9th, 1911, in finding as a fact that the guardian Tuttle assigned to each of the Campbell minors their proportionate share of the land comprising their father's estate when said minors reached the age of majority and in finding that the widow was given undisputed control of various tracts.

31

## V.

The department erred in its decision of May the 9th, 1911, in finding as a fact that practically all the land in controversy in January 1899 was uncultivated and used mainly if at all for grazing purposes, and in finding that the field of sixty to seventy-five acres was broken up but not in cultivation and in finding that said field could not be definitely located, and in finding that the location of the fences on the lands involved could not be fixed by the evidence, and in finding that the fences on the land in controversy formed no part of the continuous scheme of improvements.

## VI.

The department erred in holding as a fact that Blassengame and his grantees owned the improvements on and were in possession of about eighty acres of land in contest case 238 as the record shows that no citizen of the Choctaw or Chickasaw Nation had ever had possession of said land save the Campbell's estate, Holmes Campbell and Dave Hill. A transcript of the testimony taken at the trial of said allotment contest case is hereto attached and made a part hereof and marked "Exhibit H."

## VII.

The department in its decision of May the 9th, 1911, erred in its conclusions of law as follows, to-wit:

## I.

The Department in its decision of May 9th, 1911, erred in its conclusion of law, and the Court of Pontotoc County in which the will was probated had no jurisdiction and that the officers of said Court were prohibited from performing any acts as such under the provisions of Section 28 of the Act of Congress of June the 32 28th, 1898.

## II.

The Department in its decision of May 9th, 1911, erred in its conclusion of law that said certified copy of the will of C. L. Campbell, deceased, the Judgment of probate and the appointment and qualification of J. H. Tuttle as guardian were not admissible in evidence because such instruments were only certified to by the officers of the Indian Court, whose power to act had been taken away by Section 28 of the Act of Congress of June the 28th, 1898.

## III.

The department in its decision of May the 9th, 1911, erred in its conclusion of law in holding that the bill of sale from Holmes Campbell and J. H. Tuttle to Dave Hill was insufficient to convey any right to Hill.

## IV.

The Department in its decision of May the 9th, 1911, erred in its conclusion of law in holding that the contestants took no right to the lands involved by virtue of the several conveyances and that this contest must be decided upon other grounds disregarding the claims of contestants and contestees by virtue of the conveyances relied upon by them as a right to select said land.

## V.

The department in its decision of May the 9th, 1911, erred in its conclusion of law in holding that the claims of the guardian J. H. Tuttle and the heirs of G. L. Campbell deceased, to the land in controversy were dormant and that the lands had been abandoned.

## 33

## VI.

The Department in its decision of May the 9th, 1911, erred in its conclusion of law in holding that said guardian and heirs had no right to the possession of the land and said improvements thereon which they could convey.

## VII.

The Department by its decision of May the 9th, 1911, erred in its conclusion of law in holding that the contestees could question the validity of the conveyance made by the guardian to Dave Hill on the ground that the sale as made by said guardian was not ordered or approved by the Probate Court and that by reason thereof said conveyance was invalid.

## VIII.

The Department in its decision of May the 9th, 1911, erred in its conclusion of law in holding that the possession of the land in controversy and the improvements thereon could only be transferred by guardian under order of the Probate Court and that a sale and transfer thereof would only be valid after approval and confirmation by such court.

## IX.

That the Department after its decision of May the 9th, 1911, issued patents to the lands involved, that said patents were signed by the Governor of the Chickasaw Nation and the Principal Chief of the Choctaw Nation and approved by the Secretary of the Interior, recorded in the office of the Commissioner to the Five Civilized Tribes, delivered to the Contestees and recorded in the office of the Register of Deeds in Grady County, State of Oklahoma in Book — at Page — and that said patents cast a cloud upon the title of the plaintiff.

34

## X.

Defendant alleges and states that prior to the institution of said contest case there was a suit pending in the United States District Court within and for the Southern District of the Indian Territory at Chickasha involving the right to possession to said land, that said case was prosecuted for the use and benefit of this plaintiff to the Supreme Court of the State of Oklahoma and a judgment rendered by said Court for the possession of said land and on return of the mandate from said court this plaintiff was placed in possession of all that part of said land which he had not previously held possession of.

## XI.

That upon the facts established without dispute at the hearing before the Department, its officers fell into an error in the construction of the law applicable to the case which caused them to refuse to issue said patents to the plaintiff herein and to give them to the defendant and that, through gross mistake they fell into a misapprehension of the facts proved before them which had the like effect, that under the facts established by the evidence as shown by the record and the law applicable thereto patents to said lands should have been issued to the plaintiff.

Plaintiff states that he is the owner of and in the actual possession

of the following described lands and premises situated in Grady County, State of Oklahoma, to-wit:

The north half of the southeast quarter of section thirty-two, township seven north, range six west, and that said defendant claims title in and to said land and premises adverse to the title of this  
35 plaintiff by virtue of the issuance of said patents as aforesaid.

Wherefore, plaintiff prays that the court decree that the defendant hold the title in trust for the plaintiff and that plaintiff's claim and title to the land and premises is valid and perfect and that said defendant has no right or title therein and that the title of plaintiff be quieted in said premises and that the defendant be perpetually enjoined from setting up or asserting any title or interest in said lands and premises adverse to this plaintiff, and for such other relief as may be equitable and proper and for the costs of this action and will ever pray.

(Signed) STUART, CRUCE & GILBERT,  
*Attorneys for Plaintiff.*

(Signed) BOND & MELTON,  
*Attorneys for Plaintiff.*

Petition endorsed: Filed Mar. 12, 1913. W. L. Melton, Clerk of Superior Court.

(Herewith follows copies of exhibits attached to said petition.)

Department of the Interior,  
Commission to the Five Civilized Tribes,  
Chickasaw Land Office.

*Chickasaw Allotment Contest No. 236.*

J. B. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

vs.

FRANK REYNOLDS, a Minor, Contestee.

Land in controversy: N./2 of S. E./4 of N. E./4 S./2 of N. E./4 of N. E./4 S. W./4 of N. E./4, Section 32, township 7, north Range 6 west of the Indian Meridian, containing 80 acres.



36 With which are consolidated

*Chickasaw Allotment Contest No. 237.*

J. B. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

vs.

WILLIE REYNOLDS, a Minor, Contestee.

Land in Controversy: N./2 of the N. E./4, Section 7 North, Range 6 West, of the Indian Meridian, Containing 80 acres.

*Chickasaw Allotment Contest No. 238.*

HARRY F. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

vs.

FRANK REYNOLDS, a Minor, Contestee.

Land in Controversy: N./2 of the S. E./4, Section 32, Township 7 North, Range 6 West of the Indian Meridian, containing 80 acres.

**EXHIBIT B.**

*Chickasaw Allotment Contest No. 239.*

LEWIS JAMES, a Minor, by His Legal Guardian, Dave Hill, Contestant,

vs.

SELDAN REYNOLDS, a Minor, Contestee.

Land in Controversy: W./2 of the S. W./4, Section 33, township 7 north, Range 6 west of the Indian Meridian, containing 80 acres.

and

*Chickasaw Allotment Contest No. 240.*

LEWIS JAMES, a Minor, by His Legal Guardian, Dave Hill, Contestant,

vs.

ETHEL A. REYNOLDS, a Minor, Contestee.

Land in Controversy: N./2 of the N. E./4 of the N. W./4 W./2 of the N. W./4 Section 33, township 7 north, range 6 west of the Indian Meridian, containing 100 acres.

**Appearances:**

For Contestants: Their Guardian, Dave Hill, and Counsel, Bond & Melton.

For Contestees: Their Guardian, Charles O. Reynolds and Counsel, Holding & Bailey.

*Findings and Decision.*

After an investigation of the records of the Commission and due consideration of the pleadings and evidence in this consolidated case, the commission finds as follows:

*Statement of Record.*

The records of the Commission show:

That J. B. Hill, Harry F. Hill, and Lewis James, the contestants in this consolidated contest, are citizens by blood of the Choctaw Nation, and that Frank Reynolds, Willie Reynolds, Seldan Reynolds and Ethel A. Reynolds, the contestees in this consolidated contest, are citizens by blood of the Chickasaw Nation, and that each is entitled to an allotment of the lands of the Choctaw and Chickasaw Nations.

That on July 13, 1903, Charles A. Reynolds appeared at the Chickasaw Land Office and made application for the land in controversy in Chickasaw allotment contest No. 236, together with other lands, for his minor son, Frank Reynolds, the contestee in said contest, and that the same was by the Commission set apart to him as a portion of his allotment selection.

That on August 13, 1903, Nellie B. Hill appeared at the Chickasaw Land Office and made application to have the land in controversy in Chickasaw Allotment contest No. 236 set apart to her minor son, J. B. Hill, as a portion of his allotment; and the same having been theretofore selected, as herein stated, the said Nellie B. Hill was so notified by the Commission, and the commission refused to allow her said application.

That on September 26, 1903, the contestant J. B. Hill, by his mother, Nellie B. Hill, filed herein his complaint, duly verified, in which it is stated:

38 The contestant, Nellie B. Hill, states that J. B. Hill is — years of age and a citizen of the — Nation. That on the 13th day of August, 1903, she made application to the commission to the Five Civilized Tribes at the Tishomingo Land Office to take in allotment for J. B. Hill the N.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  & S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$  Section 32, Township seven north, range six west, and it appeared of record that on the 13th day of July, 1903, the said tract of land was selected by Chas. O. Reynolds for Frank Reynolds.

The contestant further states that all of said land is in a state of cultivation, and that the only improvements situated thereon consist of fences, etc., that contestant was on the said 13 day of July, 1903, and is now, the owner of the improvements on said land, and was then and is now entitled to take, select and file on the same as a part of the allotment of J. B. Hill.

Wherefore, contestant prays that J. B. Hill be permitted to take in allotment the tract of land described herein.

That on February 4, 1904, this cause was set for trial on March

24, 1904, at 9 o'clock A. M., and notice of contest and summons was issued to contestee.

That on February 12, 1904, return of notice of contest and summons was filed, showing service on Frank Reynolds, the minor contestee, on February 9th, 1904, by delivering a copy thereof to Charles A. Reynolds, who had said minor in charge.

That on March 24, 1904, this cause was called for trial, and by agreement of the parties, continued to April 11, 1904, at 9 o'clock A. M.

That on April 11, 1904, this cause was called for trial; upon motion of contestant, continued to April 27th, 1904, at 9 o'clock A. M.

39 That on April 27th, 1904, this cause was called for trial; both parties appeared by counsel and announced ready for trial. By agreement, Chickasaw Allotment contest Nos. 237, 238, 239 and 240 were consolidated with this contest; whereupon this cause, as consolidated was heard in part, and by agreement continued to April 28th, 1904 at 9 o'clock A. M.

That on April 28, 1904, this cause was called for trial, both parties appeared by counsel, whereupon the hearing of this consolidated cause was resumed and concluded and taken under advisement by the commission.

That on June 27, 1904, the contestant filed brief, showing service of the same by a copy on the attorneys of record for contestee, on June 27, 1904.

That on August 29, 1904, the contestee filed brief, showing service of the same by a copy on the attorneys of record for contestant, and the same, by agreement, was submitted without reference to the time in which it was filed.

That on July 13, 1903, Charles A. Reynolds appeared at the Chickasaw Land Office and made application for the land in controversy in Chickasaw Allotment contest No. 237, together with other lands, for his minor son, Willie Reynolds, the contestee in said contest, and the same was by the Commission set apart to him as a portion of his allotment selection.

That on August 13, 1903, Nellie B. Hill appeared at the Chickasaw Land Office and made application to have the land in controversy in Chickasaw Allotment Contest No. 237 set apart to her minor son, J. B. Hill, as a portion of his allotment; and the same having been theretofore selected, as herein stated, the said Nellie B. Hill was so notified by the Commission, and the Commission refused to allow her said application.

40 That on September 26, 1903, the contestant, J. B. Hill, by his mother, Nellie B. Hill, filed herein his complaint, duly verified, in which it is stated:

"The contestant, Nellie B. Hill states that J. B. Hill, is — years of age and a citizen of the — nation. That on the 13th day of August, 1903, she made application to the Commission to the Five Civilized Tribes at the Tishomingo land Office to take in allotment for J. B. Hill, the N.  $\frac{1}{2}$ , N. E.  $\frac{1}{4}$  Section 32, Township 7 North, Range six west, being eighty acres, and it appeared of record that

on the 13th day of July, 1903, the said tract of land was selected by Chas. O. Reynolds for Willie Reynolds, minor.

The contestant further states that all of said land is in a state of cultivation and that the improvements situated thereon consist of a two room boxed house, sheds, fences, etc., all of the reasonable value of three hundred dollars; that contestant was on the said 13th day of July, 1903, and is now the owner of said improvements, and was then and is now entitled to the immediate possession of said lands, and entitled to take, select and file on the same as a part of the allotment of J. B. Hill.

Wherefore, contestant prays that J. B. Hill be permitted to take in allotment the tract of land herein described."

That on February 4, 1904, this cause was set for trial on March 24, 1904, at 9 o'clock A. M., and notice of contest and summons issued to contestee.

That on February 12, 1904, return of notice of contest and summons was filed, showing service on Willie Reynolds, the minor contestee, on February 8, 1904, by delivering a copy of the same to Charles A. Reynolds, who had the said minor in charge.

That on March 24, 1904, this cause was called for trial, 41 and, by agreement of the parties, continued to April 11, 1904, at 9 o'clock A. M.

That on April 11, 1904, this cause was called for trial, and upon motion of contestant, continued to April 27, 1904, at 9 o'clock A. M.

That on April 27, 1904, this cause was called for trial, both parties appeared by counsel, and, by agreement, this cause was consolidated with Chickasaw Contest No. 236.

That on July 13, 1903, Charles A. Reynolds appeared at the Chickasaw Land Office and made application for the land in controversy in Chickasaw Allotment contest No. 238, together with other lands, for his minor son, Frank Reynolds, the contestee in said contest, and the same was by the Commission set apart to him as a portion of his allotment selection.

That on August 13, 1903, Nellie B. Hill appeared at the Chickasaw Land Office and made application to have the land in controversy in Chickasaw Allotment Contest No. 238 set apart to her minor son, Harry F. Hill, as a portion of his allotment; and the same having been theretofore selected, as herein stated, the said Nellie B. Hill was so notified by the Commission, and the Commission refused to allow her said application.

That on September 26th, 1903, the contestant, Harry F. Hill by his mother, Nellie B. Hill, filed herein his complaint, duly verified, in which it is stated:

"The contestant, Nellie B. Hill, states that Harry F. Hill is — years of age and a citizen of the — Nation. That on the 13th day of August, 1903, she made application to the Commission to the Five Civilized Tribes at the Tishomingo Land Office to take in allotment for Harry F. Hill the N. ½, S. E. ¼, Section 32, township seven north, range six west, and it appeared of record 42 that on the 13th day of July, 1903, the said tract of land was selected by Chas. O. Reynolds for Frank Reynolds.

The contestant further states that about seventy acres of said land is in a state of cultivation and the balance in pasture; that the improvements on said land consist of fences, etc., that the contestant was on the said 13th day of July, 1903, the owner of the improvements situated thereon, and was then and is now entitled to the immediate possession of said land, and entitled to take, select and file on the same as a part of Harry F. Hill's allotment.

Wherefore, contestant prays that Harry F. Hill be permitted to take in allotment the tract of land herein described."

That on February 4, 1904, this cause was set for trial on March 24, 1904, at 9 o'clock A. M. and notice of contest and summons was issued to contestee.

That on February 12, 1904, return of notice of contest and summons was filed, showing service on Frank Reynolds, the minor contestee on February 9, 1904, by delivering a copy thereof to Charles A. Reynolds, who had said minor charge.

That on March 24, 1904, this cause was called for trial, and, by agreement of the parties continued at April 11, 1904, at 9 o'clock A. M.

That on April 11, 1904, this cause was called for trial and upon motion of the contestant, continued to April 27, 1904, at 9 o'clock A. M.

That on April 27, 1904, this cause was called for trial, both parties appeared by counsel and announced ready for trial and by agreement, this cause was consolidated with Chickasaw allotment contest No. 236.

43 That on July 13, 1903, Charles A. Reynolds appeared at the Chickasaw Land Office and made application for the land in controversy in Chickasaw Allotment Contest No. 239, together with other lands, for his minor son, Seldan Reynolds, the contestee in said contest, and the same was by the Commission set apart to him as a portion of his allotment selection.

That on August 13, 1903, Dave Hill appeared at the Chickasaw Land Office and made application to have the land in controversy in Chickasaw Allotment Contest Case No. 239 set apart to his minor ward, Lewis James, as a portion of his allotment; and the same having been theretofore selected, as herein the said Dave Hill was so notified by the Commission, and the Commission refused to allow his said application.

That on September 26th, 1903, the contestant, Lewis James, by his legal guardian, Dave Hill, filed herein his complaint, duly verified in which it is stated.

"The contestant Dave Hill states that Louis James is — years of age and a citizen of the — Nation; That on the 13th day of August, 1903, he made application to the Commission to the Five Civilized Tribes at the Chickasaw Land Office to take in allotment for Louis James the W.  $\frac{1}{2}$ , S. W.  $\frac{1}{4}$ , Section 33, Township seven North, Range six west, and it appeared of record that on the 13th day of July 1903, the said tract of land was selected by one Chas. O. Reynolds for Sheldon Reynolds.

The contestant further states that all of said land is in a state

of cultivation and that the improvements situated thereon consists of fences, etc., that the contestant was on the said 13th day of July, 1903, and is now the owner of the improvements on said land, and was then and is now entitled to the immediate possession of the same, and entitled to take, select and file on said land as a part of Louis James' allotment.

Wherefore, contestant prays that Louis James be permitted to take in allotment the tract of land herein described."

That on February 4, 1904, this cause was set for trial on March 24, 1904 at 9 o'clock A. M., and notice of contest and summons was issued to contestee.

That on February 12, 1904, return of notice of contest and summons was filed, showing service on Seldan Reynolds, the minor contestee, on February 9, 1904, by delivering a copy thereof to Charles A. Reynolds, who had said minor in charge.

That on March 24, 1904, this cause was called for trial and by agreement of the parties, continued to April 11, 1904, at 9 o'clock A. M.

That on April 11, 1904, this cause was called for trial and upon motion of contestant, continued to April 27, 1904, at 9 o'clock A. M.

That on April 27, 1904, this cause was called for trial, both parties appeared by counsel and announced ready for trial, and, by agreement, this cause was consolidated with Chickasaw Allotment contest No. 236.

That on July 13, 1903, Charles A. Reynolds appeared at the Chickasaw Land Office and made application for the land in controversy in Chickasaw Allotment Contest No. 240, together with other lands for his minor daughter, Ethel A. Reynolds, the contestee in said contest, and the same was by the Commission set apart to her as a portion of her allotment selection.

That on August 13, 1903, Dave Hill appeared at the Chickasaw Land Office and made application to have the land in controversy in Chickasaw Allotment Contest No. 240, set apart to his minor ward, Lewis James, as a portion of his allotment and the same having been theretofore selected, as herein stated, the said Dave Hill was so notified by the Commission, and the Commission refused to allow his said application.

That on September 26, 1903, the contestant, Lewis James, by his legal guardian, Dave Hill, filed herein his complaint, duly verified in which it is stated:

"The contestant, Dave Hill, states that Louis James is — years of age and a citizen of the — Nation. That on the 13th day of August 1903, he made application to the Commission of the Five Civilized Tribes at the Chickasaw Land Office to take in allotments for Lewis James the N.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$  Section 33 Township seven north, range six west, and it appeared of record that on the 13th day of July, 1903, the said tract of land was selected by Chas. O. Reynolds, for Ethel A. Reynolds.

The contestant further states that there is located on the above described lands one boxed house, sheds and out-houses and fence of the reasonable value of two hundred dollars; that about ninety acres of said lands is in a state of cultivation and the balance is



pasture; that the contestant was on the said 13th day of July and is now the owner of said improvements on said lands and was then and is now entitled to the immediate possession of the same and entitled to take, select and file on said land as a part of Louis James' allotment.

Wherefore, contestant prays that Louis James be permitted to take in allotment the track of land herein described."

That on February 4, 1904, this cause was set for trial on  
46 March 24, 1904, at 9 o'clock A. M. and notice of contest and summons was issued to contestee.

That on February 12, 1904, return of notice of contest and summons was filed, showing service on Ethel A. Reynolds, the minor contestee, on February 9, 1904, by delivering a copy thereof to Charles A. Reynolds, who had said minor in charge.

That on March 24, 1904, this cause was called for trial and by agreement of parties, was continued to April 11, 1904, at nine o'clock A. M.

That on April 11, 1904, this cause was called for trial, and upon motion of the contestant was continued to April 27, 1904, at nine o'clock A. M.

That on April 27, 1904, this cause was called for trial, both parties appeared by counsel and announced ready for trial, and, by agreement this cause was consolidated with Chickasaw Allotment contest No. 236.

#### *Findings of Fact and Conclusions.*

The evidence in this consolidated case shows that the land in controversy was a part of a large tract of land enclosed about twenty-five years ago by one C. L. Campbell, and was controlled by him until his death; that said Campbell died in the year 1896, leaving surviving him his widow and five minor children; that prior to his death he executed his last will and testament, by the terms of which he devised and bequeathed to his widow, Sallie L. Campbell, and to his five children, Mont, Holmes, Lawrence, John and Rex among other property, the improvements on all the lands of which he died possessed, share and share alike, the widow to take a child's part.

The will further provides that W. L. Sawyer was to be appointed administrator of the estate, and that James H. Tuttle should  
47 be appointed guardian of the persons and estates of testator's minor children; that the administrator and guardian was each to enter into a good and sufficient bond in double the amount of the value of the property coming into their hands, which bonds were to be approved by the court. The will shortly after the death of testator, was admitted to probate in the probate court of the county of Pontotoc, Chickasaw Nation, Indian Territory, and the bonds of Sawyer and Tuttle were filed and approved.

By further and other clauses in said will and testament, the widow, Sallie L. Campbell was to be given her pro rate share of the estate as soon after the death of testator as convenient, and the guardian was to have full charge of the property and funds of the minor heirs until they arrived at the age of their majority. As each became of

age, he was to be given his pro rata share, and three of the boys have since become of age and have been apportioned their shares of the property. Two of the heirs are still minors and have not received control of their property, and the guardian has never been discharged.

The improvements on the land in controversy were no part of the improvements set aside to Sallie L. Campbell, or which she elected to select, but it appears from the evidence that she, on the 21st day of January, 1899, transferred for a valuable consideration to one J. W. Blassengame, a court claimant, all her right title and interest in and to the land in controversy, together with other lands. About one month thereafter, said Blassengame took possession of the land and he and his grantees have remained in possession the greater portion thereof since the date of his entry thereon. The balance of the land, being a part of the N.  $\frac{1}{2}$  of the S. E.  $\frac{1}{4}$  of Section 32 and the W.  $\frac{1}{2}$  of the S. W.  $\frac{1}{4}$  of the S. W.  $\frac{1}{4}$  of section 33, has been for nearly two years in the possession of Dave Hill, the father of two of the minor contestants herein and the legal guardian of the  
48 other one, he having purchased the possessory title to same, as hereinafter set forth, and also from Holmes Campbell, to whom same had been awarded on his reaching majority, as a portion of his share of his father's estate.

The number of acres in this *land* described tract which had been in possession of Dave Hill need not be determined, as the contest will be decided on other grounds, and the conclusions reached will include all of the lands in suit.

On November 18, 1902, James H. Tuttle, as guardian of the minor heirs, joined by the surviving widow of C. L. Campbell, then the wife of one Dr. Minter, and joined also by the adult heirs of said C. L. Campbell, executed and delivered to said Dave Hill a certain bill of sale, transferring to him all of the improvements on the land in controversy.

After his purchase as aforesaid, Hill demanded possession of the premises from Blassengame, and on the refusal of Blassengame to deliver possession, Hill instituted his suit in ejectment against Blassengame in the United States District Court for the Southern District of the Indian Territory, on November 25, 1902, which suit has not yet been proceeded to judgment.

On December 10, 1902, Blassengame transferred by two certain bills of sale the controverted land to John W. Brimage, a citizen by intermarriage. Brimage failed to pay the agreed consideration for said lands and later, to-wit, on the 6th day of March, 1903, he, at Blassengame's request, transferred said premises to Charles A. Reynolds, the father and guardian of minor contestees herein.

Contestants base their right to have the controverted land set apart to them as portions of their allotment selections by reason of the purchase from James H. Tuttle, et al., on November 18, 1902, and allege that the sale to Blassengame by Sallie L. Campbell conveyed no title,  
as she had no title therein to convey.

49 Contestees show purchase from Mrs. Campbell, and show that they have been in possession for over four years of all the land in controversy with the exception of the land heretofore shown



to be in the possession of Hill. They maintain that by this sale title passed and maintain that even though the sale by Mrs. Campbell to Blassengame was not good, yet so far as the contestants are concerned, the property has been abandoned, and contestees being in possession and being the first to file thereon, should be awarded the land. They further maintain, that under the laws of the Chickasaw Nation, Tuttle, as guardian, could not dispose of the property without authority and approval of the court, and Tuttle admits that he did not procure authority and that the sale was not approved. They maintain that the sale was void. They also maintain that the land was a part of an excessive holding.

It is shown from the evidence that Blassengame knew at the time he purchased from Mrs. Campbell that the premises belonged to the Campbell estate, and that the last will and testament of said Campbell dividing said estate was then being probated. It is shown that Tuttle, as soon as he learned of the sale by Mrs. Campbell, notified Blassengame that the premises were in his control, as guardian, and that he (Blassengame) could not retain possession of the same. It is shown, also, that Brimage knew of the claims of Tuttle prior to the time he purchased said land from Blassengame. It is also shown that Reynolds, the father of the minor contestees herein, was aware of the fact that suit in ejectment had been brought against Blassengame at the time he purchased from Brimage and Blassengame. No trickery or fraud can be alleged. Blassengame and his grantees went into possession with their eyes open and were prepared to fight for the land.

50 The lands were not a part of an unlawful holding, as at the time Tuttle, et al., sold to Dave Hill, the ninety days' limitation after the ratification of the Choctaw-Chickasaw Agreement (32 Stat. L., 641) had not expired. It was the privilege of all excessive holders to dispose of their excess holdings during the ninety days.

The lands were not abandoned, as they were entered upon by Blassengame without the consent or connivance of Tuttle and the heirs of the Campbell estate interested therein, and possession was retained by Blassengame contrary to the express demand of Tuttle, as guardian. Tuttle was not required to institute proceedings in court to maintain the interest of his wards in the land. Both the Atoka Agreement (30 Stat. L. 591), and the Choctaw-Chickasaw treaty (32 Stat., L. 641) contain provisions that the Commission to the Five Civilized Tribes shall have authority to settle all controversies arising relative to the right to select certain tracts of land in allotment.

The law of the Chickasaw Nation that two years' absence and non-control constitute an abandonment, is not now in force. It is not binding upon the Commission. The Commission, however, considers this law in its decision in so far as it indicates the usages and customs of the citizens of the Chickasaw tribe. The rule will not apply in this case. The improvements were the property of minors, and possession was at all times retained by Blassengame and his grantees, contrary to the will and consent of Tuttle, the legal guardian.

It is contended that the sale made by Tuttle as guardian of the minor heirs is void for the reason that Tuttle was not authorized to make the sale and the sale was not confirmed by the court.

The improvements on land in the Indian Territory which is subject to allotment partakes of the nature both of personalty and of real property. The interest of a citizen in the improvements on lands to the extent of his allotment, carrying with it a right of occupancy and the right to select his allotment so as to include such improvements, is no more than a personal interest. The interest of the same citizen in the improvements on land in excess of his allotment, and which he does not desire to take in allotment, and which he had the right to dispose of within ninety days after the ratification of the last agreement (*supra*) is a personal property interest.

In this case, the Campbell estate consisted of some ten or fifteen thousand acres of land. Each of his six heirs could select one allotment. By an Act of Congress they were given ninety days to dispose of the improvements on all lands in excess of the amount which they could allot. This excess partook of the nature of personal property, and the law as to the sale of personal property would apply.

This being true, it was not only the right of the guardian but also his duty, to dispose of any improvements owned by his wards on land in excess of their allottable shares within the time limited by law. Under the law of Arkansas as to guardian and ward, the sale of the personalty of his ward by the guardian is not prohibited by statute. No prohibition being placed on such sale by statute or by express order of the court, it comes within the scope of the powers of the guardian. The conveyance to Hill signed by the adult heirs and by Tuttle, as guardian, must be considered good. The guardian had authority to make the sale. His bond is the protection of the minor heirs in case the sale was made for an inadequate consideration.

The conveyance by Mrs. Campbell passed no title. She had none to convey. She had accepted her pro rata share of the premises. She took the home place, upon which there were valuable improvements. She had taken three allotments out of the land. Blassengame knew that the land was a part of the Campbell estate. He cannot now set up that he was an innocent purchaser.

It is true that Blassengame has placed valuable improvements on the land, but he had had the land for four years and has paid no rent therefor, and he has undoubtedly been fully compensated for such improvements. Brimage and Reynolds knew of the claim of Tuttle to the land, and cannot be said to be innocent purchasers.

The Commission is therefore of the opinion that the land in controversy should be awarded to the contestants.

### *Judgment.*

It is, therefore, the judgment of the Commission that the north half of the southeast quarter of the northeast quarter, the south half of the southeast quarter of the northeast quarter, and the southwest

quarter of the northeast quarter of section thirty-two, township seven north, range six west of the Indian Meridian, containing eighty (80) acres, and being the land in controversy in Chickasaw Allotment Contest No. 236, be awarded to J. B. Hill, minor contestant thereon; that the north half of the northeast quarter of Section thirty-two, township seven north, range six west of the Indian Meridian, containing eighty (80) acres and being the land in controversy in Chickasaw Allotment Contest No. 237, be awarded to J. B. Hill, minor contestant therein; that the north half of the southeast quarter of section thirty-two, township seven north, range six west of the Indian Meridian, containing eighty (80) acres, and being the land in controversy in Chickasaw Allotment contest No. 238, be awarded to Harry F. Hill, minor contestant therein; that the west half of the southwest quarter of Section thirty-three, township seven north, range six west of the Indian Meridian, containing eighty (80) acres, and being the land in controversy in Chickasaw Allotment contest No. 239 be awarded to Lewis James, minor contestant therein; that the north half of the northeast quarter of the northwest quarter and the west half of the northwest quarter of Section thirty-three, township seven north, range six west of the Indian Meridian, containing one hundred (100) acres, and being the land in controversy in Chickasaw Allotment Contest No. 240, be awarded to Lewis James, minor contestant therein; and that the records of the Chickasaw Land Office be made to conform in all things to this decision.

TAMS BIXBY, *Chairman.*

I. B. NEEDLES, *Commissioner.*

C. R. BRECKENRIDGE, *Commissioner.*

Dated this 3rd day of January, 1905.

Copy.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, December 11, 1905.

Refer in reply to the following land:

J. W. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

vs.

FRANK REYNOLDS, a Minor, by His Father and Natural Guardian, Chas. O. Reynolds, Contestee.

*Chickasaw Allotment Contest No. 236.*

Land in controversy: The N./2 of S. E./4 of N. E./4, the S./2 of S. E./4 of N. E./4 and S. W./4 of N. E./4 of Sec. 32, Twp. 7 N., R. 6 West, containing 80 acres.

J. B. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

vs.

WILLIE REYNOLDS, a Minor, by His Father and Natural Guardian, Chas. O. Reynolds, Contestee.

*Chickasaw Allotment Contest No. 237.*

Land in controversy: The N./2 of the N. E./4 of Sec. 32; Twp. 7 North, Range 6 West, containing 80 acres.

54 HARRY F. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant.

vs.

FRANK REYNOLDS, a Minor, by His Father and Natural Guardian, Chas. O. Reynolds, Contestee.

*Chickasaw Allotment Contest No. 238.*

Land in controversy: The North half of the southeast quarter of Sec. 32, Twp. 7, Range 6 west, containing 80 acres.

**Ex. C.**

LOUIS JAMES, a Minor, by His Legal Guardian, Dave Hill, Contestant,

vs.

SHELDAN REYNOLDS, a Minor, by His Father and Natural Guardian, Chas. O. Reynolds, Contestee.

*Chickasha Allotment Contest No. 239.*

Land in controversy: The W./2 of the S. W./4 of Sec. 33 T. 7 N. Range 6 West, containing 80 acres.

LEWIS JAMES, by His Legal Guardian, Dave Hill, Contestant,

vs.

ETHEL A. REYNOLDS, a Minor, by Her Father and Natural Guardian, Chas. O. Reynolds, Contestee.

*Chickasha Allotment Contest No. 240.*

Land in Controversy: The N./2 of the N. E./4 of the N. W./4 and the W./2 of N. W./4 of Sec. 33 T. 7 N., R. 6 W., containing 160 acres.

Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: This office is in receipt of the communication of the Commission of March 25, 1905, transmitting the record on appeal in Chick

asaw Allotment contest No. 236, consolidated, entitled Hill vs. Reynolds.

The record shows that the contestants, J. B. Hill, Harry W. Hill and Lewis James are citizens by blood of the Choctaw Nation, and the contestees are citizens by blood of the Chickasaw Nation, and that each is entitled to an allotment of the lands of the Choctaw and Chickasaw Nations.

Charles O. Reynolds appeared at the Chickasaw Land Office on July 13, 1903, and made application for the land in controversy in Contest No. 236, together with other lands, for his minor son, Frank Reynolds, the minor contestee in said contest, and the same was set apart by the Commission to him as a portion of his allotment selection.

Nellie B. Hill appeared at the Chickasaw Land Office August 13, 1903, and made application to have the land in controversy in Chickasaw Allotment Contest No. 236, set apart to her minor son, J. B. Hill, as a portion of his allotment, and the same having been theretofore selected, as above stated, the said Nellie B. Hill was so notified by the Commission and her application disallowed.

September 25, 1903, J. B. Hill, minor contestant, by his mother, Nellie B. Hill, filed herein his complaint duly verified, in which it is stated.

The contestant Nellie B. Hill, states that J. B. Hill is — years of age and a citizen of the — nation. That on the 13th day of August, 1903, she made application to the Commission to the Five Civilized Tribes at the Tishomingo Land Office to take in allotment for J. B. Hill, the N./2 S. E./4 N. E./4 and S./2 S. E./4 N. E./4 and S. W./4 N. E./4 Section 32, Township seven north, range six west and it appeared of record that on the 1-th day of July, 1903, the said tract of land was selected by Chas. O. Reynolds, for Frank Reynolds.

The contestant further states that all of said land is in a state of cultivation and that the only improvements situated thereon consists of fences, etc., that contestant was on the said 13th day of July, 1903, and is now, the owner of the improvements on said land, and was then and is now entitled to the immediate possession of the same, and entitled to take, select and file on the same as a part of the allotment of J. B. Hill.

Wherefore, contestant prays that J. B. Hill be permitted to take in allotment the tract of land herein described.

February 4, 1904, this cause was set for trial on March 24, 1904, at 9 o'clock a. m., and notice of contest and summons was filed with the commission showing service on Frank Reynolds, the minor contestee, on February 9, 1904 by delivering a copy thereof to Charles O. Reynolds, the person having said minor in charge.

This cause was called for trial on March 24, 1904, and by agreement of the parties, continued to April 11, 1904, at 9 o'clock a. m., on which date it was again called, and on motion of the contestant, was continued to April 27, 1904, at 9 o'clock a. m.

Similar proceedings were had in Contests Nos. 237, 238, 239 and 240, to April 27th, 1904, except as to names of the parties and

the descriptions of the lands in each case, which differences are fully set out in the caption hereof, and on which date, by agreement of the parties, these cases were consolidated with Chickasaw Allotment Contest No. 236.

This cause, as consolidated above, was called for trial on April 27th, 1904, both parties appeared by counsel and announced ready for trial, whereupon this cause was heard in part, and continued to April 28, 1904, at 9 o'clock a. m., on which date the cause was again called for trial, both parties appeared by counsel and the hearing was resumed and concluded, and the cause taken under advisement by the Commission.

The contestant filed brief on June 27, 1904, showing service by a copy on the attorneys of record for contestee on the same date.

The contestee filed brief on September 1, 1904, showing service of same by a copy on the attorneys of record for contestant, 57 and by agreement it was submitted without reference to the time in which it was filed.

The commission to the Five Civilized Tribes rendered its decision in the cause on January 3, 1905, and awarded all the land in contest to the contestants, and on January 7, 1905, notice of decision was issued and served on the attorneys of the parties by registered mail, and the contestees allowed thirty days within which to appeal.

Contestees filed an appeal on February 8, 1905, showing personal service of a copy thereof on the attorneys of record for the contestants on February 4, 1905. Contestee sets out thirteen assignments of error on the part of the Commission on which he asks a reversal of the decree and judgment rendered on January 3, 1905, as follows:

1. The Honorable Commission to the Five Civilized Tribes erred in finding upon the evidence.
2. The Honorable Commission to the Five Civilized Tribes erred in their finding under the law.
3. For error of the Commission in finding that the conveyance from Mrs. C. L. Campbell to J. A. Blassingame was void and without validity.
4. For error of the commission in holding that Mrs. C. L. Campbell had selected as her complete pro rata share and allotment, lands other than conveyed to Blassingame.
5. For error of the Commission in finding that said lands conveyed to J. W. Blassingame were the legal and lawful holdings of said Campbell estate.
6. The Commission erred in considering the will of C. L. Campbell deceased, no evidence being introduced to show the validity of said will, and no proper authentication of said will being made.
7. The commission erred in holding that the Chickasaw laws had no application to the adjudication of these contests 58
8. The commission erred in holding that personal property of an estate may be disposed of at the will of the guardian.
9. The Commission erred in holding that the conveyance by J. H. Tuttle vested any rights in contestant Hill.
10. The Commission erred in finding that the said lands conveyed to the said Hill were surplus holdings of any heir of the said Camp



bell estate, and that any heir of said estate had not selected their legal and lawful surplus.

11. The Commission erred in holding that any rights vested in said Tuttle by reason of said guardianship.

12. For error of the Commission in holding that Blassingame was not an innocent purchaser.

13. The Commission erred in finding that any other land had ever been assigned to Mrs. Campbell, the surviving widow.

14. The contestant filed a reply to said appeal on March 3, 1905, showing personal service of a copy thereof on the attorneys of record for contestee on March 2, 1905. March 21, 1905, contestant filed his brief and argument in support of same, showing personal service — a copy thereof on the attorneys of record for contestee on March 20, 1905.

Contestant filed motion to dismiss contestee's appeal on September 18th, 1905, for the reason that it was not filed within the time allowed by the rules, which motion was served on the attorney for contestee on the same date.

Contestee filed reply to said motion to dismiss appeal on September 21, 1905, showing service on Bond & Melton, contestant's attorneys of record by registered mail on September 21, 1905.

59 The record shows that contestee filed his appeal with the Commission on February 8, 1905, whereas his time was up on February 7, 1905. There is an affidavit in the record showing that the appeal was deposited in the post-office at Chickasha, Indian Territory, in the forenoon of February 5, 1905, which day was Sunday, and that there are mails leaving the Chickasha post-office on Sunday afternoon that should reasonably reach Tishomingo the following day. The appeal itself shows that Bond & Melton acknowledged service of same on February 4, 1905, so that contestant was in no way hampered, inconvenienced or delayed because of the fact that the appeal did not reach the files of the Commission until February 8, 1905. The object and purpose of rules of practice is to expedite business, and in order to accomplish their purpose and not work a hardship are to be construed in a reasonable and just manner. On the showing made in this case, it would seem that contestee's attorney used due diligence in preparing his appeal, and that contestant was served within the time allowed by rule, and that contestee's attorney might reasonably have expected same to reach the Commission in due course of mail within the time allowed. Under the circumstances shown in this case, it would be a hardship to strictly construe the rule and shut him out of his right to be heard on his appeal. The motion to dismiss is accordingly denied.

The contestant bases his right to be allotted this land on the ground of being the owner of the improvements thereon; that he is the owner of said improvements by virtue of a quit-claim deed executed to his father, Dave Hill, by James H. Tuttle, M. T. Campbell, Sallie L. Minter, L. A. Campbell and Holmes Campbell, on November 18, 1902, for a consideration of \$1600; that James H. Tuttle was the guardian of the minor heirs of one C. L. Campbell deceased, and signed said quit-claim deed as such

60



guardian, while those heirs who had attained their majority since C. L. Campbell's decease, viz: L. A. Campbell and Holmes Campbell signed in order to convey their interest in said estate, while the widow, now Mrs. Sallie Minter, signed her interest in said land away by joining in this quit-claim deed; that said James H. Tuttle was in full and absolute control of all of said land as such guardian, and holding same in trust for the widow and heirs of the aforementioned C. L. Campbell, deceased.

Contestee claims the land in contest by virtue of the ownership of the improvements thereon, having purchased same on March 6, 1903, from one John W. Brimage, who had purchased from J. W. Blassingame, December 10, 1902, and Blassingame derived his title from S. L. Campbell, the widow of C. L. Campbell, by quit-claim deed executed January 21, 1899. Contestee also denies the right of Tuttle to control or convey said lands at the time he did so convey to Dave Hill, and further that said lands were a part of the excess holdings of C. L. Campbell, deceased, and consequently public domain.

The evidence shows that the land in controversy was a part of a large tract of land that had been segregated from the public domain and enclosed some twenty-five years before the hearing of one C. L. Campbell, and was in his possession and control up to the time of his death in October 1896; that at his deceased he left surviving him his widow, Sallie L. Campbell, and five minor children, and two married daughters; that prior to his death he executed his last will and testament and devised and bequeathed to his widow, Sallie L. Campbell, and to his five minor children all the improvements on the lands of which he died possessed; share and share alike, the widow to take a child's part; that the will appointed one W.

61 L. Sawyer, administrator of the estate and James H. Tuttle guardian of the persons and estates of the minor children, both to enter into bonds in double the amount of the value of the property to come into their hands, and said bonds to be approved by the court; that shortly after Campbell's death his will was probated in the probate court of the County of Pontotoc, Chickasaw Nation, Indian Territory, and the bonds of Sawyer and Tuttle were filed and approved, and they entered upon their duties.

Contestee does not argue or cite any authorities in support of his first, second, eighth, tenth, eleventh, and thirteenth assignments of error, or in any manner show whereby any error was committed by the Commission, and it is presumed that he does not rely on these assignments as cause for reversal. The third assignment is not supported by the case of *Tucker v. Daniels*, Creek Contest No. 499, the facts in the case under consideration being entirely different from the facts in the case of *Tucker v. Daniels*. To the sixth assignment of error it is sufficient to say that a true copy of C. L. Campbell's will is a part of the record of the case, duly authenticated by the hand and act of the clerk of the Probate Court, which was sufficient especially when no objection was interposed thereto at the time of the hearing.

The evidence shows that at the time of the hearing, the widow,

now Mrs. S. L. Minter, had received *per pro rata* share of the entire estate, and that she and her husband and his daughter had used the same for allotments. The improvements on the land in controversy were not a part of the improvements set apart to Mrs. Campbell as her *pro rata* share. The evidence is that Mrs. Campbell at the time she conveyed to Blassingame was working this land with her teams,

62 but as a tenant of the estate, and that she paid rents to the guardian in the way of a division of the corn that was grown on the place, and that the guardian "O. K.ed." the contracts she made with her subtenants, and was in full control of all the estate lands, doing the renting, selling and managing of the proceeds as such guardian. There was no error in the finding that Mrs. C. L. Campbell, (Mrs. Minter had selected her full *pro rata* share and allotment of lands, other than those conveyed to Blassingame.

It was not error for the Commission to find that the lands, sold to J. W. Blassingame were the legal and lawful holdings of the Campbell estate, for the reason that at the time Tuttle, Mrs. Sallie L. Minter, M. T. Campbell, L. A. Campbell and Holmes Campbell sold and quit claimed to Dave Hill, the time limit of ninety days allowed to dispose of excessive holdings had not expired (32 Stat. 641.) It was the privilege of all excessive holders to dispose of their excessive holdings during this ninety days. It was not only the privilege, but in this case it became the duty of Tuttle to dispose of said improvements for the benefit of his minor wards.

Section 24 of the Act of Congress, approved July 1, 1902, (32 Stat. 641) confers exclusive jurisdiction on the Commission to the Five Civilized Tribes to determine *from* all matters relating to allotment of lands, and it is not bound by the Chickasaw laws in making such allotments, and so committed no error in not recognizing such Chickasaw laws as binding on it in passing on matters relating to these allotments.

Contestee's ninth assignment is that the Commission erred in holding that the conveyance of J. H. Tuttle vested any right in contestant Hill, and his eleventh assignment of error in holding that Tuttle had any rights by reason of his guardianship, may be considered together. Contestee contends that there is no Chickasaw

63 or Choctaw law providing for the appointment of guardians for minors, simply as minors. The Chickasaw law did provide for the appointment by the County Judge of guardians for orphan children that are not of age, while it is commonly understood the word "orphan" means a child who has been bereaved of both father and mother, the term may legally apply to such person as has lost only one of his parents, and this would seem to be a case where such a construction should be placed upon it. Such was undoubtedly the construction placed upon the term by the Probate Court of Pontotoc County, when it appointed Tuttle such guardian for the minor heirs of C. L. Campbell. The rights and duties of a guardian attached to James H. Tuttle by virtue of his appointment as such by the Probate Court of Pontotoc County, Chickasaw Nation. Did he have authority as such guardian of the minor

heirs to sell the improvements located on the controverted land? If the property be real property, he could not sell without an order from Court. The interest of a citizen in the improvements on lands to the extent of his allotment, carrying with it, as it does, the right of occupancy and the right to select his allotment so as to include his improvements, is more than a personal interest. But the interest of the same citizen to improvements on land in excess of what he desires to allot and which he had the right to dispose of within the ninety days after the ratification of the Supplemental Agreement, is a personal property interest.

The Campbell estate consisted of something over ten thousand acres of land. The heirs had all selected or designated their allotments. Congress gave them ninety days to dispose of the improvements on the excess. The improvements could be sold, or in the case of fences and buildings could be removed from the land. The excess partook of the nature of personal property, and the law as to the sale of personal property would apply. It was the duty of the guardian to dispose of these improvements during the ninety days allowed for doing so. There being no prohibition placed on a guardian's sale of the personalty of his ward by statute or by express order of the court appointing him, it was within the scope of his powers and authority as a guardian to make such sale, and the quit-claim deed to Hill, signed by the adult heirs and by Tuttle as guardian of the minor heirs, must be considered good. Tuttle will have to account to the minor heirs for their share of the proceeds when he settles with them and asks for his discharge by the court appointing him, and his bond is the protection of the minor heirs for any failure to do so or any inadequacy of consideration.

Was Blassingame an innocent purchaser? The evidence shows that he knew at the time he purchased from Mrs. Campbell that the premises belonged to the Campbell estate. It is further shown that as soon as he learned of the sale by Mrs. Campbell, Tuttle notified Blassingame that he was in control of the premises as guardian, and that Blassingame could not retain possession. It is shown that Blassingame went into possession not later than February 15, 1899, and that he was notified by Tuttle's foreman, Ladd, that he could not hold the land within from thirty to fifty days after going into possession. This would bring his notice at farthest, early in April, 1899, and the evidence shows that he paid \$270. of the consideration money on June 7, 1899. Brimage also knew of Tuttle's claim prior to his purchase from Blassingame. The evidence further shows that Reynolds, the father of the minor contestees herein knew that a suit in ejectment had been instituted against Blassingame. Blassingame and his grantees went into possession with their eyes open and were prepared to fight for the land, and neither Blassingame nor his grantees can be said to be innocent purchasers.

This office is of the opinion that no error was committed by the Commission to the Five Civilized Tribes and that the decision and judgment should be and the same is, hereby affirmed.

You are requested to give the interested parties notice hereof, and to advise them of their right of further appeal.

Very respectfully,

C. F. LARRABEE,  
*Acting Commissioner.*

Department of the Interior,  
Washington.

*Consolidated Chickasaw Allotment Contest.*

No. 236.

J. B. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

v.

FRANK REYNOLDS, a Minor, by His Father and Natural Guardian, Charles O. Reynolds, Contestee.

Land in Controversy: N./2 S. E./4; S./2 S. E./4 N. E./4 and S. W./4 of N. E./4 of Section 32, T. 7 N., R. 6 W. containing 80 acres.

No. 237.

J. B. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

v.

WILLIE REYNOLDS, a Minor, by His Father and Natural Guardian, Charles O. Reynolds, Contestee.

Land in Controversy: N./2 N. E./4 Sec. 32, T. 7 N., R. 6 W., containing 80 acres.

No. 238.

HARRY F. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

v.

FRANK REYNOLDS, a Minor, by His Father and Natural Guardian, Charles O. Reynolds, Contestee.

Land in Controversy: N./2 S. E./4 Sec. 32, T. 7, R. 6 W., containing 80 acres.

## EXHIBIT F.

No. 239.

LEWIS JAMES, a Minor, by His Legal Guardian, Dave Hill,  
Contestant,

vs.

SELDAN REYNOLDS, a Minor, by His Father and Natural Guardian,  
Charles O. Reynolds, Contestee.

Land in Controversy: N./2 S. W./4 Sec. 33, T. 7 N., R. 6 W.,  
containing 80 acres.

No. 240.

LEWIS JAMES, by His Legal Guardian, Dave Hill, Contestant,

vs.

ETHEL A. REYNOLDS, a Minor, by Her Father and Natural Guardian,  
Charles O. Reynolds, Contestee.

Land in Controversy: N./2 N. E./4 N. W./4 and W./2 N. W./4  
Sec. 33, T. 7 N., R. 6 W., containing 100 acres.

67

On Review.

This is a contest instituted on behalf of J. B. Hill, Harry F. Hill and Lewis James, minor Choctaws, whose degree of Indian blood respectively, is 1/32, 1/32 and 1/4, against Frank, Willie, Seldan and Ethel Reynolds, minor Chickasaws, whose degree of Indian blood is 1/4 each, to determine the right to select in allotment five tracts in the Chickasaw Nation, described above, embracing 420 acres of land.

A decision was rendered by the First Assistant Secretary of the Interior February 6, 1907, in favor of the members of the Hill family. On review, this decision was recalled and vacated and prior decisions of the Commissioner of Indian Affairs and the Commissioner to the Five Civilized Tribes were reversed by a decision rendered by the Acting Secretary August 21, 1907. While the matter was under review, tribal patents were inadvertently issued conveying the land in question in the Hill children. Subsequently, a suit was instituted in the proper United States Court to have these instruments set aside and, after various proceedings, which need not be detailed, a consent decree was entered cancelling the patents, with the understanding by all concerned that the case should again be heard and decided upon its merits by the Department. The case was resubmitted at length by both parties, orally and by brief, and is not ready for final decision.

The contestants claim these lands by reason of priority of possession and ownership of improvements. Contrary to this, the contestees rely on priority of application, in addition thereto and claim

a better title to the improvements and a greater right to the possession of the land than their opponents.

68 The lands in controversy lie between the forks of East Bitter and West Bitter creeks, and include the major portions of the east half of section 32 and the contiguous lands comprising part of the west half of Section 33, all in township 7 north, range 6 west of the Indian Meridian. West Bitter Creek passes in a southerly direction near the western limits of these tracts, East Bitter Creek flowing also to the south, does not touch any of them being approximately one half mile to the east. The Chickasaw-Purcell road runs in a general easterly and westerly direction, near or through the northern portion of the land.

These lands were once a part of a much larger tract known as the C. L. Campbell farm which embraces 12,000 to 15,000 acres in the Chickasaw Nation and extended over a considerable portion of the adjacent and near-by sections. Cambell, a white man, having married a woman of part Indian blood, occupied or claimed these lands for a number of years prior to his death which occurred in 1896. He used the major portion of the land for grazing but reduced some 1200 or 1500 acres to cultivation. The Campbell home place and the buildings were in the N. E./4 of said section 33, considerably east of the main body of the land in controversy. North of the home place lay the extensive tract which is referred to in the records as the "North Pasture."

At the original hearing (April 27, 1904) the contestants offered in evidence *in writing* purporting to be a copy of the will of C. L. Campbell, and a copy of the minutes of the Chickasaw (Indian) court confirming the appointment of W. L. Sawyer, as administrator, and J. H. Tuttle, as guardian, certified to be true copies thereof by the Probate Clerk of Pontotoc County, Chickasaw Nation, under date of April 25, 1904; the Contestees excepted because of

69 (1) failure to show that the original of the will could not be furnished, and (2) lack of proper authentication or certification. This exception will be considered in a subsequent connection.

By this will Campbell, disposed of his personal property and certain lands claimed by them to his wife and five minor children. Share and share alike. Other property, "of whatsoever kind" (except household furniture and wearing apparel) "not herei-before mentioned," he bequeathed to his wife and children (including two adult daughters) in equal shares. Apparently the adults were to receive their shares, wholly or in part, within one year after the testator's death, and the minors' interests were to be held in trust by the guardian.

After the death of Campbell his widow and minor children, continued to occupy the old Campbell home. In 1899 she again married a white man, a Doctor Minter, with whom she continued to reside at the same place.

Upon allotment of tribal lands under the agreement of 1902, Mrs. Minter selected the lands including the Campbell home as her allotment. Nearby lands, constituting a part of the Campbell holdings, were selected as the allotments of Dr. Minter and a daughter. Other



Campbell lands were allotted to certain of her children, while still other portions were disposed of and the proceeds used to provide allotments elsewhere for other members of the family.

January 21, 1899, Mrs. Campbell, prior to her marriage to Dr. Minter, executed a quit-claim deed or bill of sale conveying to one J. W. Blassingame her right, title and interest in and to the possession of two tracts of land (formerly held or claimed by her deceased husband), together with the improvements thereon. This transaction marks the origin of the claims of the Reynolds children.

70 Blassingame paid \$250 for the first of these tracts which is described in the bill of sale as the "Campbell North Horse Pasture," which is north of the land in controversy and not a part of it, and also north of the Chickasha-Purcell road. The second tract, which does embrace the lands involved in these contracts, with additional lands bordering it on the east, list south of said road and nearly east of West Bitter Creek, and is described in the instrument of conveyance as follows:

One section to be taken out of the northwest corner of her (Mrs. Campbell's) tract of land. Beginning on the east bank of West Bitter Creek, about one hundred *years* south of the Chickasha and Purcell road, thence south one mile, thence east one mile, thence north one mile, thence west one mile to the place of beginning.

The consideration for the land so described was to be certain cattle, but the sum of \$270 was finally paid in lieu thereof.

Blassingame entered into possession of these tracts in February or March, 1899, and held the same until December 10, 1902, during which time he made valuable improvements thereon. On the date last named he executed a bill of sale conveying his interest in the land obtained from Mrs. Campbell, together with the improvements, to one John W. Brimmage, for a consideration of \$1500. Brimmage assigned to C. A. Reynolds who desired the land for his children, the contestees herein. He paid Blassingame \$500 in money and gave his note for \$1000 which was paid later in full.

It is impossible to make a finding as to whether C. L. Campbell complied with the requirements of the intermarried laws of the Chickasaw Nation necessary to confer citizenship. 71 Were he now an applicant for enrollment the case would necessarily be remanded for completion of the record.

September 7th, 1897, a decision was rendered by the United States Court for the Central District of Indian Territory admitting James W. Blassingame and his four children to enrollment as citizens by blood, and his wife as a citizen by intermarriage of the Chickasaw Nation. This decree was rendered under the act of June 10, 1896 (29 Stat. 321) which declared that the judgments of the United States Courts in such cases should be final. This decision remained undisturbed until after Blassingame transferred to Brimmage. The Choctaw-Chickasaw citizenship court rendered a decree December 17, 1902, in the test case of J. T. Riddle et al. setting aside and vacating the decision of the United States Courts in all such cases. Thereupon Blassingame transferred his case to the Citizenship Court for trial de novo with the result that on February



29, 1904, he was denied enrollment by said court. Brimmage and Reynolds are both intermarried whites, with Indian children.

The next conveyance to be considered is the basis upon which rests the claim of the contestants. November 18, 1902, J. H. Tuttle (as guardian of John and Rex Campbell, minors) Mrs. Minter, (formerly Mrs. Campbell) and her sons, M. T. A. A. and Holmes Campbell, executed a bill of sale purporting to convey to Dave Hill, father of the contestants, substantially the same premises as those described in the bill of sale from Blassingame to Brimmage, i. e., the lands in controversy, with the improvements thereon, together with other lands lying east and north.

December 24, 1902, H. E. (Holmes) Campbell, adult son of Mrs. Campbell, and J. H. Tuttle joined in a bill of sale purporting to convey to the said Dave Hill the north half of the southwest quarter, and the north half of the southeast quarter (two eighty-acre tracts) of said section 32, with the improvements thereon. The latter tract only is a part of the lands in controversy.

The consideration for the conveyance of November 18, 1902, was to be \$1600, which remained unpaid at the time of the hearing; that for the conveyance of December 24, 1902, was to be \$750, all but \$225 of which has been paid. Neither conveyance was made under authority of, or confirmed by, any court.

Litigation resulted from the claims based upon the conveyances made by members of the Campbell family. Tuttle stated that he did not himself give notice to Blassingame to quit possession but wrote to his foreman, Geo. Ladd, "To tell him that he could not have the land." Ladd testified that in the spring of the year that Blassingame entered into possession he told Blassingame that Mr. Tuttle wanted him to get off the land.

Mr. R. Bond, attorney for contestants, testified that Mr. Tuttle and Doctor Minter came to the office of Holding and Bond (his firm) and requested them to bring suit; that they notified Blassingame and his son to quit possession; that Dr. Minter was to furnish the funds for the suit; but that the funds were not furnished and the suit was never instituted. Witness further states that this occurred, "to the best of my recollection", in 1899 or 1900.

J. W. Blassingame, Mrs. Campbell's first grantee, testified that he never received any notice from Ladd to quit possession; that three years after he acquired the place he received a written notice from Holding and Bond claiming the land; that no suit was instituted by them.

November 25, 1902, suit in ejectment was filed by Hill against Blassingame. This occurred one week after the bill of sale to Hill was executed by Tuttle and members of the Campbell family. Answer was made by Blassingame and by Reynolds on behalf of his children. Apparently nothing was done from 1902 until sometime after the inadvertent issue of patents to the Hill family towards prosecution of this suit. Thereafter plaintiffs obtained a judgment on the ground that they were the owners of the title to the land. Later the patents were cancelled, as before noted.

Pertinent to the facts in this case — certain laws and treaty pro-

visions which have been carefully considered but will not, by reason of the space required, be set forth in full. They are: The Chickasaw Tribal Acts of October 7, 12, 12 and 19, 1876 (Chickasaw Law Book 1899 pp. 57, 81, 73, 144) relating, respectively to the making of wills, the descent of property, the duties and powers of guardians and the disposition of the estates of deceased Chickasaws; the act of Congress of May 2, 1890 (26 Stat., 83, 94, 95) putting in force the act of the Statutes of Arkansas, 1884, in force in Indian Territory generally, except as to Indian citizens; the act of June 7, 1897 (30 Stat. 85) making said statutes applicable to all persons therein, irrespective of race; section 28 of the act of June 28, 1898, (30 Stat. 495, 504) abolishing all tribal courts in Indian Territory and depriving the officers thereof of all authority in connection therewith; section 29 of said act of June 28, 1898, and section 70 of the act of July 1, 1902, (32 Stat., 641) giving parents precedence over guardians in the selection of allotments for minor Indians. Article 1 of the treaty of 1855 providing that each

74 Choctaw and Chickasaw should have an equal interest in the tribal lands, Article XV of the treaty of 1866 (14 Stat., 769) providing a tentative plan of allotting 160 acres to each citizen; the Chickasaw acts of September 24, 1887, October 11, 1892 and October 28, 1889 (Law Book 1899, pp. 199, 200, 292, 243) relating respectively to what constituted a valid claim to Chickasaw lands and the abandonment thereof, defining what should be a lawful fence and providing a penalty for fencing land for pasturage and sections 17 and 18 of said act of June 28th, 1898, and sections 19 and 20 of the act of July 1, 1902, supra relating to excessive holdings and providing penalties therefor.

Much of the Campbell farm was inclosed for pasturage purposes. The cultivated portion did not exceed 1200 or 1500 acres. The evidence fails to show that any improvements were added to the land either by Mrs. Campbell or by Tuttle, or by any of the Campbell children after the death of C. L. Campbell. The fields constituting the home place, and probably (prior to 1899) some of the land now in controversy, were cultivated by her workmen or by tenants. Her testimony is in conflict with that of Tuttle as to who received the rents from the land last mentioned. She claims that she let out the lands and received the rents. He claimed that he still expects to get the rents from her. It may be held, however, with reasonable certainty that, during the period Blasingame was in possession, i. e., from January 1899 to December 1902, there was no serious effort to dispossess him.

Tuttle claims that when the minors became of age he assigned to each his share of the land comprising his father's estate and that the widow was given independent control of various tracts of land. 75 The most that can be inferred from his testimony is that the lands lying somewhere north and east of West Bitter Creek were placed at the disposal of Mrs. Campbell and that other lands south of that creek were held by him for the minor Campbells, but Mrs. Minter testified positively that no assignment was made to the heirs of the lands due each. It appears no act of Tuttle's, by way

of renting the land or disposing of the interest of the heirs therein, was ordered or confirmed by any court, either of the Chickasaw Nation or the United States, and every indication points to the conclusion that during the time he was supposed to act as guardian matters were allowed to drift merely, to take such course as best they might, without any special control by him, pending the allotment of the land.

The witnesses gave their testimony more than five years after Mrs. Campbell conveyed to Blassingame, and, as a result, their statements are in a degree indefinite and conflicting, but it appears that practically all of the land in controversy was at that time (January 21, 1899) uncultivated, used mainly, if at all, for grazing purposes. Two fields of 12 or 15 acres each, and probably one of 35 acres had been reduced to a state of cultivation, but seemingly not separately fenced. A fourth field of 60 to 75 acres was mentioned as being located within a pasture fenced to itself with a four-wire fence, "broke up" but not under cultivation. None of these fields, particularly the last, can be definitely placed with respect to the lands embraced in any one of these contests. It further appears that there was an extreme outside fence around said pasture which probably conformed substantially to the square mile described in Mrs. Campbell's bill of sale to Blassingame; also

76 that there was another fence running along a creek, not named. Neither the condition or the exact location of these fences can be fixed by the evidence, but it may be inferred that the "extreme outside fence" passed diagonally through the western edge and perhaps skirted the northern border of the lands which are the tracts now covered by the several contests, without conforming to the government survey, passing finally beyond and to the east of all or nearly all of said lands. The fields referred to above were detached tracts forming no part of a continuous scheme of improvement.

Tuttle's exercise of dominion or control of the lands in controversy seems to have been limited, after Blassingame entered into possession to these fields, and even as to them it does not appear that he did more than to request his attorneys to have the rents sued for in the suit which was contemplated in 1899 but never instituted.

During the period these lands were held by Blassingame valuable improvements were made upon them consisting of building, fences, wells and cultivation, including the drainage of a considerable acreage. Blassingame estimated the value of these improvements to be \$2500.00. As the contestants, in their contest affidavits, swear to the existence of much improvements well distributed over the several tracts and as Hill admitted that the land was practically all in cultivation when Tuttle and Mrs. Minter conveyed to him in 1902, this phase of the matter need not be discussed in detail.

Viewing this controversy first from the standpoint of the several conveyances referred to above, what conclusion follows as to the right of the claimants by reason thereof? The bill of sale of January 21, 1899, to Blassingame, was executed by Mrs. Campbell only.

77 Assuming that her interest in the tracts conveyed was derived from C. L. Campbell, either by will or by inheritance, and

that said lands properly and lawfully constituted a part of his descendible estate, it would have been necessary to a complete conveyance of the right of possession for the other members of the Campbell family to join with her in the bill of sale unless there was an assignment of these particular lands to her as her part of the estate. But she testified there was no assignment of individual interests.

Even if it should be held that *there* where a family of Indian citizens in occupation of tribal lands is deprived by death of the father, particularly if he has a noncitizen white man, the right of possession passes to the surviving mother, with sole power of disposition, without recognition of any separate right in the children, still there would be grave doubt as to whether Mrs. Campbell had such an interest in this land in 1899 more than two years after husband's death, as would entitle her to convey. This because of lack of affirmative showing of compliance, either by herself or her husband, with the tribal laws referred to above relating to the making of lawful claims on the public domain, the abandonment thereof, the construction and maintenance of fences, and the fencing of lands for pasturage purposes only.

Mrs. Campbell (as S. L. Minter) was also one of the grantors who joined in the conveyance of November 18, 1902, to Hill, but her act must be regarded as *margatory* for she had already transferred her right to the same land to Blassingame for a valuable consideration. J. H. Tuttle, claiming to act for the minors, John and Rex Campbell, also signed this bill of sale. But his act was not authorized or confirmed by any court. Even under the Chickasaw law, it would have been necessary, had the Indian Probate Court been empowered

to act, to secure the consent of the court (see Section 8, 78 Chickasaw Act of October 12, 1876, *supra*) but the power of the tribal judges to act was absolutely taken away by section 28 of the act of Congress of June 28, 1898, also referred to above, which abolished the tribal courts and provided that no officer of such courts should "thereafter have any authority whatever to do or perform any act theretofore authorized by law in connection with said courts."

If Tuttle had proceeded under the laws of Arkansas, as published in Mansfield's Digest, 1884, it would have been necessary for him to comply with the various provisions therein relative to the duties of guardians, but there is no evidence, or even a claim, that he did so. It follows that no force can be attached to the bill of sale insofar as it purports to convey the interests of said minors. Moreover, it is necessary to hold in this connection that the copy of the alleged will of Campbell and of the minutes of the court showing the appointment of Tuttle were not properly admitted in evidence for the reason that the same were certified only by an officer of the Indian Courts. This conclusion is also based on section 28 of the act of June 28, 1898.

In absence of proper evidence of a will, and proceeding upon the theory that C. L. Campbell died intestate, it must also be held (contrary to the terms of the alleged will) that the two adult daughters of C. L. Campbell succeeded upon his death to a child's share in his whole estate. This being true it was necessary, to pass good title, assuming Campbell had a descendable interest in the extensive hold-

ings claimed by him, for them also to join in the conveyance of November 18, 1902, but they failed to do so. This defect in parties also applies to the Campbell bill of sale to Blassingame.

There remains to be considered the bill of sale of December 10, 1902, from J. H. Tuttle and Holmes Campbell to Dave Hill which affected the lands now in controversy as to the 80 acres covered by contest No. 238. There is nothing in this instrument to show that Tuttle acted in a representative capacity, and it is subject generally to the objections to the bill of sale of November 18, 1902, pointed out above.

The department is of opinion that the defects and irregularities in these bills of sale, executed by or on behalf of the members of the Campbell family, are so vital as to render extremely doubtful any claim of right or title based thereon and that the controversy must therefore be determined upon more substantial grounds if a just and fair conclusion is to be reached.

Primarily the right of possession to Indian communal lands is based upon actual occupation. And where an Indian has acquired special interest in a portion of the lands of his tribe by such means and has materially enhanced the value of such land by placing improvements on the same, or has invested his means in improvements placed thereon by others, it is the unwavering policy of the Department to recognize and protect his equitable interest rather than to turn the land over to another having a mere nominal title thereto, particularly where the person having the obvious right was first to apply for the land.

Applying this standard to the present situation, what are the rights of the Hill family in these lands? There are three small tracts to which Hill asserts special claim of right, which may or may not be identical with the fields referred to hereinbefore. Two of these (said to contain from 12 to 15 acres each) are a part of the land included in the bill of sale of November 18, 1902, from Tuttle and members of the Campbell family, neither of which is shown to have been fenced as a separate inclosure. One of them is located by Hill in the southwest corner of the N. E. 4 of section 32 and is a part of the 80 acres embraced in contest No. 236; the other, according to his testimony is in the southwest corner of the S. W. 4 of section 33, and constitutes a part of the 80 acres covered by contest No. 239.

The possession which he claims to have held of these two tracts, aggregating perhaps 25 acres, was of a constructive nature only, acquired more than three years after the origin of Blassingame's claim thereto, and based upon the right supposed to accrue by reason of the irregular and incomplete bill of sale last referred to above. There can be no doubt of the correctness of this conclusion in view of Hill's admission that he had never put any improvements upon the place obtained through that bill of sale, or received any rents therefrom.

In view of the shadowy claims of the Hill children to these two tracts, it cannot be held they have a paramount right to prevail in contests Nos. 236 and 239, particularly as each is only about one-sixth the area of the lands affected by said contests respectively.

The third tract to which Hill lays special claim, said to contain 30 or 35 acres, is a part of the 80 acres in contest No. 238, being that portion of same lying west of West Ritter Creek. He bases his claim to this, as well as to the whole of said 80 acres, upon the defective and imperfect bill of sale executed December 10, 1902, by J. H. Tuttle and Holmes Campbell. Hill testified that he caused a fence to be placed around this 30 or 35 acre tract (the west part of the eighty) January 1, 1903, which was nearly four years after Blasingame acquire the same and subsequent to the latter's transfer to Brimmage. The character of this fence is now shown but, in view of the brief time within which it was evidently constructed, it may well be questioned whether it had the element of strength and permanence necessary, according to numerous decisions of the Department, to constitute a bona fide improvement. Six months after this fence was constructed contestees made application for the lands in controversy.

In the opinion of the Department this small tract was an integral part of the lands long occupied and improved by Blasingame, as a compact farm unit, and that the right acquired by Reynolds by actual investment could not be swept aside by Bill's late and unwarranted assertion of right.

There was a fourth tract, vaguely referred to in the testimony which, it is alleged, was fenced by itself and lay somewhat within the large pasture, but it is impossible to locate this field with respect to any particular contest.

As these small tracts are outlying portions of the old Campbell place, it seems to be necessary in this connection to repeat the ruling heretofore made by the Department that, while remote tracts even if not highly cultivated or thoroughly subdued, may be treated as a part of the farm to which they are appurtenant and, in a contest case, be disposed of as an inseparable part of it, but that such outlying tracts cannot be held to be the nucleus of an independent allotment right. *Blakeney v. Bishop*, decided May 31, 1907, (M. 60 A. A. C. 278).

Much of the deeming force of the arguments for contestants dependent upon the impression conveyed that in some way the heirs of C. L. Campbell, particularly the minors, will be deprived of the inheritance if the selection of the contestees are allowed to stand. But there is no real force in this suggestion. The Campbell family for many years enjoyed the benefits of the vast acres of land claimed by C. L. Campbell, much of which was unquestionably held in defiance and defiance of the laws of the Chickasha Nation and the

United States? If Campbell was holding 15,000 acres at the time of his death, the average amount then held for each member of the family, including the two adult daughters, was more than 1600 acres, i. e. approximately five times the average number of acres allotted to each citizen of the tribe. The cultivated portion of his holding included about 1200 or 1500 acres. It follows therefore that the part to which the family probably had a substantial claim was absorbed by their allotment selections which were principally made either directly therefrom or from other lands acquired



with the proceeds obtained by sale of their interest in parts thereof. The lands now in controversy are not needed for the allotment of any member of the Campbell family.

Nor should it be overlooked that, save the conveyance of Mrs. Campbell in 1899 to Blasingame, it does not appear that any attempt was made by Tuttle or members of the Campbell family to comply with that portion of the act of June 28, 1898 supra making excessive holdings illegal and providing a penalty therefor. From and after the expiration of the nine months allowed Indian citizens under that act to dispose of such holdings it was unlawful for them to hold more than their approximate share of the tribal lands. True the said act of July, 1902, did give an extension of ninety days, beginning with September 25, 1902, to dispose of excessive holdings in order to protect owners of bona fide improvements, but it was certainly not intended to permit Indian citizens to revive and reassert claims long dormant, after others had entered into possession of and highly improved the lands once claim- by them.

The fact that Blasingame was finally denied enrollment militates in no way against the justice of contestees' claims. They invested their means in improvements made by him and succeeded to his possessions. Moreover, his right to occupy and improve Indian lands was legally perfect as he and the members of his family had the status of citizens of the Chickasaw Nation by a decree of the United States Court rendered under an act of congress which provided such decrees should be final.

In reviewing this case the Department has been particularly impressed with the failure of the contestants to show affirmatively a superior right to the land. The burden of establishing such right was upon them, as plaintiffs, but they have failed to make out a case in their behalf. Independently of such failure, it is evident that to disturb the allotment made to the Reynolds Children would not be right.

Therefore the Department adheres to its decision of August 21, 1907, and the lands embraced in said contests numbered 236, 237, 238, 239 and 240 are hereby awarded respectively to Frank Reynolds, Willie Reynolds, Frank Reynolds, Seldan Reynolds and Ethel A. Reynolds, the contestees therein.

(Signed)

FRANK PIERCE,  
*First Assistant Secretary.*



## Department of the Interior.

Commission to the Five Civilized Tribes.

*Chickasaw Allotment Contests Nos. 236, 237, 238, 239, & 240.*

Chickasaw Land Office.

April 27, 1904.

No. 236.

NELLIE B. HILL, for Her Son, J. B. Hill, Minor, Contestant  
vs.

CHAS. O. REYNOLDS, for Frank Reynolds, Minor, Contestee.

No. 237.

NELLIE B. HILL, for Her Son, J. B. Hill, Minor, Contestant,  
vs.

CHAS. O. REYNOLDS, for Willie Reynolds, Minor, Contestee.

No. 238.

NELLIE B. HILL, for Her Son, J. B. Hill, Minor, Contestant,  
vs.

CHAS. O. REYNOLDS, for Frank Reynolds, Contestee.

No. 239.

DAVE HILL, for His Ward, Louis James, Contestant,  
vs.

CHAS. O. REYNOLDS, for Sheldon Reynolds, Contestee.

EXHIBIT F.

No. 240.

DAVE HILL, for His Ward, Louis James, Contestant,  
vs.

CHAS. O. REYNOLDS, for Ethel A. Reynolds, Contestee.

*Land in Controversy.*Contest No. 236—N./2, S. E./4 and S./2 of S. E./4, N. E./4  
S. W./4 N. E./4, Sec. 32 T. 7 N., R. 6 W.

Contest No. 237—N./2, N. E./4, Sec. 32, T. 7 N. R. 6 W.

Contest No. 238—N./2, S. E./4, Sec. 32, T. 7 N. R. 6 W.

Contest No. 239—W./2, S. W./4, Sec. 33 T. 7 N. R. 6 W.

Contest No. 240—N./2, N. E./4, N. W./4 and W./2, N. W.  
Sec. 33, T. 7 N. R. 6 W.*Appearances.*

For the Contestants, Bond &amp; Melton.

*Statement of Mr. Bond, of Counsel for Contestants.*

The counsel for Contestants expect to show in this case that about twenty or twenty-five years ago C. L. Campbell, now deceased, segregated the land in controversy from the public domain and was in possession of same and controlled the same until his death, sometime in 1896; that under his last will and testament he willed a child's part of his land to his wife, Mrs. Sallie Campbell, and the remaining part of the land belonging to him was willed to his minor heirs. That J. H. Tuttle was appointed guardian of the minor heirs, of said C. L. Campbell, and under the will and his letters of guardianship took possession and assumed control of the land in controversy for the minor heirs of said C. L. Campbell. That in the year 1902, the said Tuttle, as guardian of the minor heirs of said Campbell, executed a quit-claim deed to the said premises in controversy, to one Dave Hill. That the said Tuttle signed the said deed as guardian for the minor heirs of said Campbell, and those heirs who had reached the age of majority since the death of said Campbell also signed said quit-claim deed, and that Mrs. Sallie Minter, the wife of said C. L. Campbell, also signed said deed. We further state that Dave Hill, the grantee in this deed, purchased the land in controversy for the purpose of allotting his minor heirs upon same, and claims title to said land by reason of said purchase and through the said quit-claim deed. We expect to show further that the said testamentary guardian had absolute and full control of the entire land of deceased C. L. Campbell, and he was to hold the same in trust for the widow and heirs of said C. L. Campbell, who were to share equally in the same.

*Statement of Mr. Bailey, of Counsel for Contestees.*

The contestee, answering the allegations of the contestant herein, deny each and every allegation made therein except those herein-after admitted. The contestee admits that one C. L. Campbell, now deceased, at some time, which said date is unknown to contestee was in possession of the land herein sued for; and that the said Campbell did at some time during the year 1896 die, leaving a will in which the home and certain other parts of his estate and segregated lands were willed to his widow, Mrs. S. L. Campbell, who is now Mrs. S. L. Minter. Contestee further states that during the year 1899 the said Mrs. S. L. Campbell, now Mrs. Minter, sold to one J. A. Blasingame the lands herein sued for, for a valuable consideration, and that immediately thereafter the said J. W. Blasingame, who was a citizen of the Chickasaw or Choctaw Nation, went into the possession and control of said land, and remained in the exclusive, full and complete control of said land until during the latter part of the year 1902, or early part of 1903, when he sold the said land to one Brimmage, a citizen of the Chickasaw or Choctaw Nation by birth; and that afterwards the said Brimmage trans-

ferred for a valuable consideration all his rights, title and interest in and to the said lands to the Contestees herein; and that Chas. O. Reynolds purchased this land as his legal and lawful allotment for himself and minor children, whose names are contained in the complaints herein filed. Contestee further states that at the time of the purchase of the land herein sued for by the said J. W. Blassingame from the said Mrs. S. L. Campbell now Mrs. S. I. Minter, the said lands were in the full and complete control of the said Mrs. Minter by further reason of her agreements with one Tuttle, who acted as guardian of the minor children of said C. L. Campbell, deceased. Contestee further states that the said Mrs.

87 Campbell executed to the said Blassingame a quit-claim deed and bill of sale for the said lands, and that at the time of the execution of said deed the lands herein sued for were unimproved other than a small amount of broken land on the tract conveyed by said Mrs. Campbell. Contestees further deny that one Dave Hill, who claims to have purchased the lands herein sued for, ever purchased the said lands, or has ever exercised any control or possession over the said lands. Contestees further state that if the said Mrs. S. L. Minter and one Tuttle and the heirs of the said C. L. Campbell did execute to one Hill a quit-claim deed for the lands herein sued for the said heirs were without any authority of right or control over the said lands; that they and each of them were in the full control of their legal and lawful allotments, and considerable excess holders. That the said Tuttle could not execute any valid deed as guardian of these children to the lands herein sued for, and that the said Mrs. Campbell had already surrendered all her rights, title and interest for a valuable consideration to the said J. W. Blassingame, under whom Contestees claim the lands herein sued for. Contestees further show that at the death of the said C. L. Campbell, he was holding large bodies of land, amounting in the aggregate to perhaps 8,000 or 10,000 acres, and that each and all of his heirs have taken their allotments from land in the possession of said C. L. Campbell at the time of his death.

88

*Testimony.*

DAVE HILL, a witness for the Contestants herein, having been fully sworn, testified as follows:

## Direct examination.

By Mr. Bond:

Q. State your name to the Commission?

A. I sign my name Dave Hill.

Q. Your age?

A. Thirty-seven.

Q. Your post office address?

A. Chickasha, Chickasaw Nation.

Q. And your citizenship?

A. Intermarried Choctaw citizen.

Q. This is an action, Mr. Hill, brought by you for your ward Louis, James, and your minor sons, J. B. Hill and Harry Hill. Are you acquainted with the land in controversy?

A. Yes sir.

Q. How old is your son J. B. Hill?

A. He will be seven years old in September.

Q. How old is your son Harry Hill?

A. He is five years old.

Q. How old is your ward Louis James?

A. He is ten or eleven, I couldn't say positively just as to the age.

Q. Mr. Hill, how did you acquire title to these premises in controversy?

A. I bought it from Jim Tuttle.

Q. Did he execute a quit claim deed?

A. Yes sir.

Q. Have you the deed in your possession?

A. Yes sir.

89 By Mr. Bond: We desire to have this deed (offering deed) made a part of the record and marked "Exhibit A."

Q. This deed is also signed by M. T. Campbell, Mr. Hill? Is he a son of C. L. Campbell, deceased?

A. Yes sir.

Introduction of deed objected to by counsel for Contestees for the reason that no interest is shown in any of the parties making same.

Q. Do you know whether or not M. T. Campbell has reached the age of majority?

A. Yes sir.

Q. How old is he?

A. I don't know—26 or 27 years old.

Q. This deed is also signed by Holmes Campbell. Is he a son of C. L. Campbell, deceased?

A. Yes sir.

Q. Is he of age?

A. Yes sir.

Q. This deed is also signed by S. L. Minter. Is she the widow of C. L. Campbell, deceased?

A. Yes sir.

Q. This deed is also signed by L. A. Campbell, do you know whether or not his disability has been removed?

A. I don't understand the question.

Q. Who is L. A. Campbell?

A. Son of Mrs. Campbell; Mrs. Minter now.

Q. Son of C. L. Campbell deceased?

A. Yes sir.

Q. Do you know whether he is a married or single man?

A. He is married.

90 Q. Does the land described in this quit-claim deed include the lands in controversy in this action?

A. It includes all of it but 80 acres.

Q. From whom did you purchase this 80 acres that this deed does not include?

A. I purchased it from Holmes Campbell and Tuttle.

Objected to as incompetent, immaterial and irrelevant.

Q. Have you the deed to that land?

A. Yes sir. (Witness produces deed.)

Mr. Bond: We ask that this deed be made a part of the record and marked "Exhibit B".

Q. I will ask you to look at this deed, Mr. Hill, and describe the eighty acres conveyed by this deed that is also in controversy in this action.

A. The 80 acres in controversy on this piece of land, there is, I suppose 30 or 35 acres of it on the west side of West Bitter, and 35 or 45 on the east side of West Bitter. This land on the west side has never been in the possession of no one else but the Campbell estate and Dave Hill. It is the north half of the southeast quarter of Section 32.

Q. Then, if I understand you correctly, West Bitter Creek runs through the north half of the southeast quarter of Section 32?

A. Yes, sir.

Q. Practically dividing that 80 acres into two equal parts?

A. There is a little more on the east side than on the west side. The east side the Campbell estate and Hill has had possession of ever since it has been put in cultivation. The west side I have had possession and rented and tended since the first day of January, 1903, fenced.

Q. I will ask you, Mr. Hill, about how many acres are there in contest between the minor heirs of yourself and those of Reynolds, without the Morgan piece?

A. A little over 400 acres.

91 Q. How much of this land are you now in possession of?

A. I am in possession of something like 125 or 130 acres—something like 110 acres.

Q. Who is in possession of the remaining part of it?

A. Mr. Reynolds I guess. Twelve or thirteen acres right here in the southwest corner of the northeast quarter of Section 32 is in my possession; then here is a piece, now, down in this corner, 12 or 15 acres, in the southwest corner of the southwest quarter of section 33 that has been in my possession ever since the 18th day of November 1902.

Q. Did you make any attempt Mr. Hill, after you purchased this land to secure possession of the same.

A. Yes sir.

Q. What did you do?

A. I went and told Mr. Blassingame that I had bought the land from the Campbell estate and that I wanted him to get off of it and give me possession.

Q. Was he in possession of it at that time?

A. Yes sir.

Q. What did he state?

A. He said he wouldn't do it. I told him we would bring suit for  
 Objected to as incompetent and irrelevant.

Cross-examination.

By Mr. Bailey:

Q. Mr. Hill, how long have you lived near these lands that are  
 in litigation here?

A. I have lived somewhere near them for something like three  
 years.

Q. How long have you been acquainted with the Campbell farm?

A. I have been acquainted with it three years and over.

Q. Do you know Holmes Campbell?

A. Yes sir.

Q. How old is he?

A. I judge something like 24 years old.

Q. Is he a married man?

A. No sir.

Q. Do you know Mont Campbell?

A. Yes sir.

Q. How old is he?

A. Something like 26 or 27.

Q. Mrs. S. L. Minter is the widow of C. L. Campbell, deceased, is  
 she?

A. Yes sir.

Q. Do you know L. A. Campbell?

A. Yes sir.

Q. How old is he?

A. I could not tell you, only he is a married man.

Q. Are there any other Campbell children?

A. Two more.

Q. What are their names?

A. John and Rex.

Q. How old are they?

A. I judge one of them is eighteen and the other probably is six-  
 teen.

Q. Do you know where Mont and Holmes and L. A. Campbell  
 and Rex and John Campbell lived at this time?

A. Bud Campbell lived on the south end of the old Campbell  
 place.

Q. Which one do you call Bud?

A. L. A. Campbell.

Q. Where does Mont Campbell live?

A. Four miles east of Chickasha.

Q. Where does Holmes Campbell live?

A. I couldn't tell you where his home is.

Q. On the old Campbell place?

A. I couldn't tell you whether it is on the old Campbell place;  
 he stays at Mont's part of the time and at the old lady's part of the  
 time.

Q. Do you know where Rex and John Live?

A. Yes sir.

Q. Where?

A. They claim their home at the old lady Minter's on the old Campbell place.

Q. Do you know how much land C. L. Campbell was holding there at the time of his death?

A. No sir, I do not.

Q. Do you know how much the Campbell estate is holding there at this time?

A. No sir, I do not.

Q. Have you no idea?

A. Not much of an idea.

— How much in your best judgment?

A. I don't suppose they are holding anything to exceed their allotments.

Q. You don't know how much they are holding?

A. No sir, I don't know how much they are holding.

Q. When you went up there in that section three years ago, who at that time was in control of the lands that are now in litigation here?

A. Blassingame.

Q. Mr. J. W. Blassingame?

A. Yes sir, I think he was.

Q. Was he living on this land at that time?

A. No sir.

94 Q. His tenants were there?

A. Yes sir.

Q. Who was in possession of that place the next year?

A. Blassingame, I suppose.

Q. Who was in possession the next year?

A. I suppose Blassingame was there in possession of it; I know Charley Reynolds was in possession the next year.

Q. When did you first set up your claim to any part of that land?

A. On the 18th day of November, 1902.

Q. That is when you claim to have purchased it from Mr. Tuttle and the members of the Campbell family?

A. Yes sir.

Q. Who was in possession of the land at that time?

A. I suppose J. W. Blassingame was in possession of it.

Q. You have not been in possession of that land since that time have you?

A. Part of it, I am.

Q. What part of it are you in possession of?

A. I am in possession of the north half of the southeast quarter of section 32. I am in possession of 12 or 15 acres of the northwest quarter of Section 33, I am in possession of 12 or 15 acres of the northeast quarter of section 32, in the southwest corner.

Q. That little strip there is just the land that is west of the creek? Are you in possession of all that is below the creek there?

A. Yes sir; about 12 or 15 acres in each piece.

Q. That is all you are in possession of?

A. No sir; 80 acres more.



Q. When did you take possession of that?

A. I took possession on the 1st day of January 1903.

Q. How did you get possession?

95 A. It was turned over to me by Holmes and Mont Campbell.

Q. Is it not a fact that you went down there and by force, or over the protest of the tenants in possession of the place at that time, constructed a fence there?

A. No sir.

Q. You did construct a fence across there, did you not?

A. No sir.

Q. Who did?

A. I think it was Holmes Campbell.

Q. It was put there at your request was it not?

A. I don't know as it was.

Q. Were you not there with them at that time?

A. No sir.

Q. You didn't go about there?

A. I was over there the day they went up there.

Q. Did you not know that the fence was being put there?

A. Yes sir.

Q. Is it not a fact that your possession there was contested during the entire time the crop on that 80 acres was being grown?

A. I don't think it was.

Q. Were you not aware that the land belonged to Mr. Reynolds and that he would claim the rent on that 80 acres?

A. No sir. (Continuing answer:) Mr. Reynolds said the day he come out there that he wouldn't claim that piece of ground inside of that fence, the first day he was out there.

Q. You did not know the fence was going to be put there?

A. Yes sir.

Q. And you requested it to be put there?

A. I guess you might just as well say I did.

Q. That is all the land you are in possession of on that place.

A. Yes sir.

96 Q. And never was in possession of any other land on that place?

A. No sir, except what I have described.

Q. Have you attempted to move the crop and collect the rents; they never have paid you any rents?

A. No sir; they piled up the rents for me and Mr. Reynolds hauled them off.

Q. Then you are not in possession of 135 acres on that place, are you?

A. Of 135 acres?

Q. You are not in possession of the 135 acres that Mr. Reynolds is contesting for?

A. I am in possession of about 110 acres.

Q. That includes the 80 acres that Holmes and Mont Campbell had fenced off?

A. That was only part of it fenced off.

Q. Who had been in possession of the 80 acres previously?

A. Blassingame had been in possession of 35 or 40 acres and the Campbell estate the balance of it.

Q. Was the land in cultivation?

A. Yes sir.

Q. Who was in possession of it the year before it was fenced?

A. The Campbell estate was in possession of it—35 or 40 acres, and Blassingame 35 or 40.

Q. How much did you pay for that land?

A. Seven hundred and fifty dollars, that is for the full quarter section; there are eighty acres there that are not in this contest.

Q. You paid seven hundred and fifty dollars for the entire quarter section did you?

A. For the entire quarter section.

Q. What did you pay Mont Campbell?

97 A. I didn't pay Mont Campbell anything.

Q. How much did you pay for the land that you purchased from Tuttle and the Campbell heirs?

A. Sixteen hundred dollars.

Q. How much land was there in cultivation there at that time?

A. It was pretty much all in cultivation—something like 60 acres.

Q. What improvements were there on that land at that time?

A. There were a couple of renters' houses, two granaries, crib or something like that—barn.

Q. The place was pretty well improved was it not?

A. Tolerably, yes.

Q. Practically the entire tract of land was in cultivation?

A. Yes sir.

Q. Have you ever put any improvements on that place?

A. I have not.

Q. Have you ever received any rents off of that place?

A. I have not.

Q. Have you ever exercised any control over that place?

A. No sir; I have tried to collect the rents and the rents were piled up there for me.

Redirect.

By Mr. Bond:

Q. Who piled the rents up for you, Mr. Hill?

A. Pat Ellis.

Q. What became of these rents?

A. Mr. Reynolds had them hauled off. I had contracts with all those men before Mr. Reynolds ever came in possession.

Q. Did you have rental contracts with all the tenants on that place?

A. Yes sir.

Contestee- objects unless contracts are produced.

98 Q. You say that Mr. Reynolds filed on a portion of your land and that neither Blassingame nor Brimmage nor Rey-

nolds nor anyone else had been in possession of — except the Campbell estate and yourself?

A. Yes sir.

Q. Did you not receive rents off that land?

A. Yes sir. I received all the rents off this 80 acres that he has filed on and all the rents off these two blocks of 12 or 15 acres each; there never was any contest against it.

Q. Mr. Hill, I believe you stated that you had possession of this place and that you filed suit against Blessingame?

A. Yes sir.

Q. In what court did you file it?

A. In the United States Court.

Q. Where?

A. At Chickasha.

Recross.

By Mr. Bailey:

Q. When did you file that suit?

A. I think that suit was filed on or about the 25th day of November, 1902; I think that was the date.

Q. You filed suit for ejectment?

A. Yes sir.

Q. You bought this property, you say, on the 18th day of November?

A. Yes sir.

Q. When did you give him notice to move?

A. I gave him notice to move, I think somewhere about the 20th or 25th.

Q. About the time you filed the suit?

A. Yes sir, on the same day.

99 Q. Was this sixteen hundred dollars ever paid?

A. Paid by note.

Q. Has it not been paid yet?

A. No sir.

Q. To whom is that note payable?

A. Payable to J. H. Tuttle.

Q. Has this seven hundred and fifty dollars ever been paid?

A. All the seven hundred and fifty dollars has been paid, but two hundred and twenty-five dollars.

Q. How was that paid?

A. It was paid in checks, money and one horse put in on it.

Q. It was paid along in installments—piecemeal?

A. Yes sir.

Q. You don't know Mr. Hill whether any court has ever approved the deed you have here from Mr. Tuttle, do you?

A. No, I do not.

*James H. Tuttle.*

**JAMES H. TUTTLE**, a witness for the Contestants herein, having been first duly sworn, testified as follows:

## Direct examination.

By Mr. Bond:

Q. Mr. Tuttle, will you state your name to the Commission?

A. James H. Tuttle.

Q. Your age?

A. Forty-two.

Q. Your pose office address?

A. Minco.

Q. Are you a citizen of either the Choctaw or Chickasaw Nation?

A. Chickasaw.

Q. By inter-marriage?

A. Yes sir.

100 Q. Is your wife a daughter of C. L. Campbell deceased?

A. My second wife was, yes sir.

Q. Did C. L. Campbell execute a will and testament before he died?

Objected to by contestee.

Q. Were you ever appointed guardian of the minor heirs of C. L. Campbell?

A. Yes sir.

Q. Are you the guardian of the Campbell heirs at this time?

A. Of the minor heirs I am, yes sir; Rex and John.

Q. This is a suit, Mr. Tuttle, between Dave Hill for his ward and his minor children against Charles O. Reynolds for his minor heirs. Are you acquainted with the lands in controversy in this action?

A. Yes sir.

Q. Do you know where this land is located?

A. It is located on Bitter Creek six miles east of Chickasha; what is known as the Campbell place.

Q. Did you ever, by your deed as guardian of the minor heirs, and with the heirs who had reached the age of majority, quit-claim and convey the land in controversy to Dave Hill?

A. I did.

Contestees object, as the deed is in evidence.

Q. This instrument purports to be a deed made by yourself as guardian of John Campbell and Rex Campbell; it is also signed by S. L. Minter, L. A. Campbell, Holmes Campbell, and M. T. Campbell, marked "Exhibit A". Is that your signature Mr. Tuttle?

A. Yes sir.

Q. Do you know how old M. T. Campbell is, Mr. Tuttle?

A. It is that Mont?

A. Yes sir.

A. He is about 24 I think.

Q. Do you know how old Holmes Campbell is?

101 A. He is in his 22nd year, I think; I am just guessing at this now.

By the Commission:

Q. They are all of age?

A. Yes sir, all of age.

By Mr. Bond:

Q. You had full power and authority to make this deed?

A. Yes sir. You understand L. A. Campbell was not of age, but when he was married, I got the court to declare him at the age of majority.

Q. By what authority are you acting as guardian for these children?

A. Guardianship from the court.

Q. Did C. L. Campbell, deceased, in his last will and testament ask that you be made guardian for his children?

A. The will so shows, yes sir.

Q. About what time did C. L. Campbell die?

A. I think he died in October, 1896; he has been dead about eight years.

Q. After his death, who went in possession and control of the estate of his minor heirs—the land?

A. I did.

Q. Did you take possession and control of the land in controversy in this action after his death?

A. I did, yes sir.

Q. How long did you have control and possession of it?

A. I had control and possession of it until I turned it over to those boys.

By the Commission:

Q. What do you mean by "those boys?"

A. I mean those of age—Holmes and Mont and Lawrence.

102 By Mr. Bond:

Q. Did you turn over any of this land in controversy—I am speaking about the land in controversy and not the entire estate?

A. No, I never turned any over; I told Mrs. Campbell to take her teams and work it, she has so many teams; she broke land; the other part I never did turn over at all.

Q. You never did turn over possession of this land to anyone?

A. No sr.

Q. You always held it for the minor heirs?

A. Yes sir.

Q. How long did you hold the land after the death of Mr. Campbell—the land in controversy?

A. I think it was about two years before Mrs. Campbell sold it. In fact I didn't know exactly when she did sell it; I didn't find it out for six months afterwards.

Q. Did you give her any right or authority to sell this land?

A. No, sir, I did not.

Q. Did the minor heirs ever receive any of the consideration that was paid to her for this land?

A. No sir, not to my knowledge.

Contestees object unless he knows.

Q. Did you ever deliver the possession of this land to Mr. Blassingame, or to Mr. Reynolds?

A. No sir.

Q. Do you know how Mr. Blassingame came in possession of this land.

A. I understand he bought it from Mrs. Campbell.

Q. What did you do when you heard that he had bought it from Mrs. Campbell?

A. I notified him he could not get it.

Q. By whom did you notify him, or how?

A. By Mr. Ladd, my foreman.

103 Q. Did you notify him not to take possession of this land?  
A. He had possession of it before I understood he had got it; he was camped on it.

Q. Did you notify him to quit the possession of it?

A. Yes sir, I told him he would never get it.

Q. Have you been continuously from that time until now claiming this land for the minor heirs of the Campbell estate?

A. Yes sir.

Q. Did you ever take any proceedings in court to eject him from this land?

A. I employed Holding and Bond to intercede against Mr. Blassingame.

Q. How long was that after he had taken possession of the land?

Contestees object unless it is shown when he took possession.

Q. Do you know whether or not these attorneys you employed served notice on Mr. Blassingame to quit possession?

A. Yes sir, they got the notices out and referred them to me.

Q. Do you know whether or not these attorneys ever instituted suit against him?

A. No sir, I do not.

Q. About how long after Blassingame had taken possession of this land was it before you employed a law firm to have him ejected?

Contestees object on the ground that there is no record of any suit ever having been brought.

Q. I don't know exactly how long it was; it was right away, though. I have no record of it. I went right over there and put the case before them.

Q. Did they promise you they would institute suit?

A. Yes sir.

Q. Did you ever as guardian for these minor heirs make any deed or grant or bargain away, any part of this land in controversy to any person than to Dave Hill?

A. No sir.

104 Q. Did you ever give any one the right to take these lands in allotment, or to file upon the same?

A. No sir.

Q. Have you made any effort to find the original will of C. L. Campbell, deceased?

A. Yes sir.

Q. What effort have you made in order to find it?

A. I have sent to Stonewall after it.

Q. The original I am speaking of, a certified copy?

A. The original is at Stonewall, I have never had a certified copy of it.

Q. The original will is at Stonewall?

A. Yes sir.

Q. Have you also sent to Stonewall for a certified copy of your letters of guardianship?

A. Yes sir.

#### Cross-examination.

By Mr. Bailey:

Q. Mr. Tuttle, you say you were appointed as guardian of these children, or suggested as guardian, under the will left by C. L. Campbell?

A. I was.

Q. Have you ever seen the original of that will?

A. Yes sir.

Q. You say that after Mr. Campbell's death you, as guardian, went into possession of his property and holdings. What did you do to take possession?

A. It was turned over to me by the administrator.

Q. Who was the administrator?

A. W. L. Sawyer.

Q. How long after Mr. Campbell's death was it before W. L. Sawyer turned this estate over to you?

105 A. I think it was about likely four months.

Q. What did he do to turn the estate over to you?

A. Well, he settled up Mr. Campbell's business.

Q. Paid his debts?

A. Yes sir.

Q. Rented his lands?

A. No sir, he never rented his lands.

Q. He sold his property?

A. Yes sir.

Q. And paid up his debts?

A. Yes sir.

Q. And then told you as guardian to take possession?



A. Yes.

Q. How much land did you take possession of?

A. I don't know how much; I took possession of the old Campbell place.

Q. About how much was that?

A. I think there was about three sections in that farm, under the farm fence, and then that pasture land, about four thousand acres up above there and twenty-five hundred east of there; something like ten thousand acres of land all told.

Q. You took possession of all of that?

A. Yes sir.

Q. What rights, if any, did you set aside for the widow at that time?

A. Set aside that she taken the right as the will designated; she ignored the rights of the will.

Q. What rights?

A. For her to have the home place and 160 acres of land; the rest of it was to be held in trust and the children were to take allotments out of that and the rest was to be sold.

Q. They were to pick out of the seven or eight or ten thousand acres?

106 A. Yes sir.

Q. Have the children picked out their allotments?

A. They have not all filed. Rex and John have not filed.

Q. They are all living on their places, are they?

A. Yes sir.

Q. They have picked their allotments, and this land in controversy here is not selected as the allotment of any of the Campbell children, is it?

A. It was selected as the allotment of Holmes Campbell.

Q. Did he dispose of it?

A. Yes sir, and bought land up at Minco.

Q. How old was Holmes Campbell at the time this land was sold?

A. He was 21 years old.

Q. Had he received his part of the estate?

A. Yes sir.

Q. Did he buy this land up at Minco from the money he obtained from his part of the estate?

A. Yes sir.

Q. The money from this land sold to Hill?

A. I don't know about that; he got money through a settlement of the estate.

Q. It was not, then, money from the land sold to Hill?

A. I don't know anything about that.

Q. Has there ever been any division of this estate?

A. Only as they have come of age.

Q. All of them are of age now with the exception of two?

A. Yes, Rex and John.

Q. Mont & Holmes and L. A. Campbell have their allotment?

A. Yes sir.

Q. Rex and John have their allotments?

A. Designated, yes.

Q. It was there on the old Campbell place, was it not?

A. Yes sir, but Lawrence and Holmes are not on the Campbell place.

107 Q. They are up near Minco?

A. Yes sir.

Q. This deed that you executed to Dave Hill, Mr. Tuttle, you executed and signed for the minor children, did you not?

A. For Rex and John.

Q. Were Rex and John in possession of their allotments at that time?

A. No sir, they are not yet.

Q. Were they in possession of lands they intended to take in allotment?

A. I was in possession of that land they intended to take as their allotments.

Q. That is true, is it not?

A. Yes sir.

Q. What improvements, Mr. Tuttle, were on the land in controversy here and claimed to have been sold by Mrs. Minter to Mr. Blassingame; what improvements were on that land at the time Blassingame took possession of it?

A. There was about 70 acres broke out and a four wire fence, and one house set on it, a tenant house.

Q. Where was that house?

A. On the south end of it.

Q. Across the creek?

A. Yes, across the creek.

Q. Is that house there now?

A. Yes sir.

By the Commission:

Q. Which side of the creek do you speak of now?

A. The creek that runs south and turns east, it set right on the south bank where it turns east.

By Mr. Bailey:

108 Q. You understand that the land on which that house is situated, across the creek, is not in contest. Do you understand the lands being contested for here?

A. It is the land in the forks of the creek.

Q. Take that map, please, and show us what lands are being contested for (handing witness improvement plat)—I will ask you again now remembering that that 80 acres is not being contested for, what improvements were on the land purchased by Mr. Blassingame from Mrs. Minter at the time he purchased this land?

A. When Blassingame got that land there was one outside fence running around this pasture; inside of that pasture there was 70 or 75 acres under a four wire fence and under cultivation.

Q. What that all the improvements on the land that is now being contested for at the time Mr. Blassingame got it?

A. I told you there was an extreme outside fence went around it and then a fence run down the creek and around inside this house, inside that pasture there was 70 or 75 acres under a four wire fence broke out.

Q. Then that 70 or 75 acres with this outside fence constituted all the improvements on the land now in contest at the time Mr. Blassingame got it?

A. No this outside fence just come on the outside of the Creek.

Q. I am asking you about the land now in contest?

A. That is in contest.

Q. I want to know what improvements were on this land at the time Mr. Blassingame bought it, the same land that is now being contested for here?

— Do you mean to eliminate that 80 acres?

Q. Yes sir, for that land is not being contested for?

A. The house on that 80 acres was part of the improvements.

By the Commission:

Q. Answer what improvements were on the land in controversy at the time Mr. Blassingame bought it.

109 A. It was under a four wire fence and 70 or 75 acres broke out, in cultivation, been in cultivation four or five years.

Q. That was all the improvements on that part of the land?

A. Yes sir.

By Mr. Bailey:

Q. Now, Mr. Tuttle, what year, if you remember, was it when Mr. Blassingame purchased this land?

A. I never saw Blassingame and don't know when he purchased it.

Q. When was it when you first heard he had purchased it?

A. It was in October, 1898, I think when Ladd first wrote me he was on it. You understand I did not know Mr. Blassingame bought this land at that time.

Q. Mr. Blassingame went in possession of it at that time, did he not?

A. I don't know when it was; in October or November Mr. Ladd notified me that Mr. Blassingame had got on that side of the Section line.

Q. Did you ever go out and visit these premises in litigation here?

A. Yes sir.

Q. Did you find Mr. Blassingame there?

A. No sir.

Q. Did you rent this land to anybody?

A. No, I never rented it to anybody.

Q. Did you ever collect any rents from this land after 1899?

A. Off of about 105 acres I did.

Q. Off of about 105 acres that is included in the contest here?

A. I don't know whether it is included in the contest; it was part of that sale.

Q. I will ask you, then, if after 1899 you collected any rents from anybody on the land that is being contested?

A. You will have to show me what is contested and then I will tell you that. I have been collecting rent off of something like 60 or 70 acres ever since he has got it.

Q. Point out there—(handing witness improvement plat) the 60 or 70 acres you have been collecting rent from?

A. About 35 acres in the northeast corner of the southeast quarter of section 32, and then on twelve acres in the southwest corner of the northeast quarter of section 32 and 12 or 15 acres in the southwest corner of the southwest quarter of section 33.

Q. Of your own knowledge you do not know the number of acres that is included in this description given here, but you simply make the estimate from your observation of the map as you have here indicated it?

A. Yes sir.

Q. You have no accurate knowledge personally of what that is?

A. I collected rent off of that land.

Q. Off of whatever there may be?

A. Yes sir, the exact amount I don't know.

Q. Then it is a fact that after the sale of this land to Blassingame by Mrs. Minter you did not collect any further rents from the land that has been contested for?

A. No sir, I just asked for the land to be sued for, the rent to be included in the suit.

Q. You say you arranged for that suit to be brought for the possession of this land?

A. Yes sir.

Q. How soon was that after the sale to Blassingame?

A. I don't know how soon it was; my best recollection is, though, it was the next spring after.

Q. Do you remember what year it was when you wanted suit brought?

A. I think it was in 1898.

Q. Whom did you employ to bring this suit?

111 A. Bond and Holding.

Q. Do you know whether suit was ever brought or not?

A. I know they told me they would bring it.

Q. Were you ever summoned to appear in that cause?

A. I don't think I was.

Q. Do you know whether you ever appeared in such a cause?

A. I know I appeared to them and asked them what they were going to do about it.

Q. Do you mean that you appeared in a court?

A. No it never came to trial.

Q. Then you don't know whether suit was ever filed, do you?

A. I have their word for it.

Q. You never appeared in any suit?

A. No.

Q. And you don't know that any suit was ever brought—that is true, is it not?

A. I don't know it only from them.

Q. Did they tell you they had brought suit?

A. No sir, they said they were going to.

Q. That is all they ever said about it?

A. Yes sir.

Q. Now Mr. Tuttle, I will ask you if it is not a fact that the land conveyed to Mr. Blassingame and the land that is being contested for here was set aside to Mrs. Campbell as her own separate land and estate?

A. No sir, it was not.

Q. I will ask you if it is not a fact that before Mrs. Campbell executed the deed to Mr. Blassingame for this land, she went to see you and asked permission to sell certain lands east of the creek and you objected on the ground that they were the children's lands, but told her she might sell these lands set aside for her?

112 A. No sir, I did not. Mrs. Campbell came to see me and said, Mr. Tuttle, Mr. Blassingame tells me they are going to clear my north pasture, that is the pasture north of this land, that is the pasture I turned over to her and told her to use it, she said I have a chance of selling; she never spoke a word about this land in controversy at all; she says, though, I have a chance of selling a piece of land coming across this section line. I says, you can't sell that to anybody. I says, I don't care what you do about the hill land. She never said a word about this land in controversy.

Q. She was in control and possession of this land at this time?

A. No sir; if so, why was she coming up and asking me about it.

Q. She asked you about some other land?

A. The land was all together.

Q. She was working this land that is being contested for, and was leasing the other land at that time?

A. Under my supervision.

Q. The rent was payable to her?

A. I was dividing the leases up and after the thing run about two years—

Q. Is it not a fact that the land contested for, was being leased by Mrs. Campbell at the time she sold it to Mr. Blassingame?

A. By me O K'ing the lease.

Q. The lease was made in her name?

A. Her and me together, she only leased it one year.

Q. Who was in possession of it under the lease at the time it was sold?

A. I don't think anyone was.

Q. Do you not know a man named Sherwood was leasing it?

A. If he held a lease on it?

113 Q. Is it not a fact that at the time the sale was made this land was being leased to Dink Sherwood?

A. No sir, if he was he was leasing it from somebody else.

Q. Did you receive any rents from that land in controversy during the year 1899?

A. I think Mr. Blassingame had possession of it in 1899.

Q. Did you receive any rents from it in 1898?

A. I let her rent that portion of the land. I told her she could

use this land and the children would use the land on the south side of the creek.

Q. She was renting the lands in controversy here at that time?

A. She was renting the lands north of the fence.

Q. Was she leasing the lands in contest here at that time?

A. She leased it under my supervision to Oliver. It was not Dink Sherwood, to the best of my knoweldge.

Q. And you are certain that Mrs. Campbell never approached you in regard to the sale of the land in controversy?

A. Yes sir, I am, most certain.

Q. I will ask you if after the sale had been made by Mrs. Campbell to Mr. Blassingame, you went to Mr. Blassingame and stated to him that he could not take the land south of the Creek, because that was the children's land?

A. No sir.

Q. And further, in the same conversation, when Mr. Blassingame told you that the land embraced in his bill of sale did not take that land, but commenced at the public road and took 80 acres north of 32, you told him, well, that was all right then, you thought he was getting on the children's land south of the creek?

A. I never had no such conversation with him about the land.

Q. You did not have a conversation with him at that time, or any time later?

A. No sir.

114 Q. I will ask you if you have visited the land in contest here, if you have been on the premises since this land went into the possession of Mr. Blassingame?

A. Oh, yes, I have been on it.

Q. You have exercised no control over it since that time?

A. Only that certain part of it that I stated awhile ago.

Q. You have received no rents from them?

A. No sir, but I will. I will get them out of the old lady.

Q. Do you know what amount of that ground is broken and in cultivation at this time?

A. To the best of my knowledge, about all we could get in, and some of the rock hills too.

Q. Were you familiar with that land at the time it was sold to Mr. Blassingame?

A. I ought to have been.

Q. What was the character and nature of that land at that time?

A. It was very good.

Q. Was it very low and swampy, and stood under water a part of the time?

A. There was 40 acres that is in controversy that was swampy; forty acres you say you don't claim was sometimes, but the upper end was very good.

Q. I believe you stated awhile ago that the land in controversy here is not wanted, so far as you know, as the allotment of any of the Campbell children.

A. It is wanted for the valuation of the money there is in it.

Q. That is all, is it?

A. Yes sir.

Q. Was the deed that you made to Mr. Hill ever approved by any court, or was the land sold under order of any court, so far as you know.

115 A. No sir, it wasn't necessary.

Q. Do you remember when you made this deed to Mr. Hill?

A. I made it in October 1902, I think. I don't remember the exact date.

Q. You say you spoke to counsel about bringing suit to eject Mr. Blassingame from these premises. Do you know when that was?

A. It wouldn't be long after he got on there, I don't remember the date, it was a short time after.

Q. Did you ever take any action in regard to the matter?

A. I sir, I couldn't take any.

Redirect.

By Mr. Bond:

Q. As soon as you heard Mr. Blassingame was in possession of these premises, did you not send your foreman there to notify him to get off?

A. Yes sir, but I never talked to Blassingame.

Q. How long was this after he had taken possession?

A. I wrote to George to tell him he couldn't have that land and afterwards George told me he had notified him?

Q. Was it as much as a month?

A. I don't know exactly, but I don't think it was that long I told him to tell Blassingame that if he bought that particular piece of land he could not have it.

Q. Did you ever go to Mrs. Campbell and ask her about the matter?

A. Yes sir, I asked her what she meant by it and she said she never wanted to sell that land.

Contestees object.

Q. I notice on the improvement plats here that this land is appraised to Mrs. Campbell, most of it. Do you know who instructed the appraisers to appraise it to her?

116 A. No sir, I do not. I never saw them. That is no criterion anyhow because they listed all that to Tuttle and I had not had possession of it for three years. My cattle was in there and they just supposed it was my land.

Q. Do you know who segregated this land in controversy from the public domain?

A. Mr. Campbell did.

Q. Do you know in what year?

A. No, it has been too long; I have been here 27 years.

Q. Did Mrs. Minter ever farm this land as your tenant?

A. Yes sir, she farmed it one or two years as my tenant with her teams.



Q. You never did permit Mrs. Minter then to take possession of this land as hers and exercise control over it?

A. No sir.

Q. Nor to receive the rents or benefits from it?

A. No sir.

Recross.

By Mr. Bailey:

Q. You say Mrs. Campvell occupied this land as your tenant?

A. Yes sir.

Q. Under contract with you?

A. Yes sir.

Q. Did she pay you rent?

A. Pair her rent in the division of the corn that came off the place.

Q. Paid you rents on this place and took her percentage of the corn?

A. She would take so much corn? If there was ten thousand bushels raised she got two thousand bushels; I charged her with a third of the corn she raised there.

117 Q. Has Mrs. Campbell taken her allotment on this land at this time do you know?

A. Yes sir, she has allotted on the 160 acres the will designated across the creek too.

Q. Have you ever signed any deeds, Mr. Tuttle, to any other lands part of the old Campbell place, other than the deed to Mr. Hill?

A. I think that I signed one for Mr. Kelly (?)—No I didn't sign that—Holmes Campbell signed that.

Q. He signed that for himself?

A. Yes sir.

Q. Has the Campbell estate ever been settled?

A. No sir not settled; there are two minor heirs yet.

Q. There has been no final settlement?

A. No sir.

Q. This part sold by Holmes Campbell to Bailey, was it ever assigned to him as a part of his estate?

A. Yes sir.

Q. Then he laid no claim to this part sold to Mr. Blassingame?

A. Yes, I made him take 160 acres of the Blassingame land.

Q. How much did you make him take of the Bailey land?

A. He got 160 acres of that, and 40 acres, I believe, of the Blassingame land in settling with him.

Q. When was that?

A. It was two years ago, I think.

By Mr. Bond:

Q. Holmes Campbell was of age when he transferred this land, was he?

A. Yes sir.

Q. This land had been turned over to Holmes Campbell by you when he arrived at age?

A. Yes sir, when I settled with him, I just cut the piece in two, when I went to settle, I couldn't settle anyway, but to draw  
118 straws.

By Mr. Bailey:

Q. Mr. Blassingame was in possession of the land at that time?

A. Part of it.

By Mr. Bond:

Q. When Holmes and Bud and Lawrence Campbell sold their allotments there, they did not have any land at Minco, did they?

A. No sir.

Q. It was after they sold their land down there that they bought land at Minco?

A. Yes sir; when Bud sold his land there he come up to Minco and bought land there.

By Mr. Bailey:

Q. Which one is Bud?

A. L. A. Campbell.

Q. And when Holmes sold his land at Chickasha he went to Minco and bought land?

A. Yes sir.

Q. You say you have Holmes 160 acres of the Blassingame land?

A. Yes sir.

Q. To whom did you give the rest of it?

A. Part of it to John and Rex.

Q. Was that all the remainder after you had given Holmes 160 acres?

A. The balance of it, they had to take their chances with it. I settled with Holmes and told him he could take his chances of getting it from Blassingame.

Q. Did you tell Rex and John that?

A. I was taking care of Rex and John.

119

*George Ladd.*

GEORGE LADD, a witness for the Contestants herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bond:

Q. Mr. Ladd, where do you live?

A. At Chickasha in the Chickashaw Nation, seven miles north of town.

Q. Were you working for Mr. Tuttle as his foreman in the years of 1897 and 1898?

A. Yes sir.

Q. This is a suit Mr. Ladd between the Reynolds and Hill heirs for the possession of certain lands located on the old Campbell place. Do you know where that place is?

A. Yes sir.

Q. Did you ever reside on that place?

A. Yes sir.

Q. About how many years?

A. A little over 14 years. I was there in 1889 and left March 1st 1904.

Q. Are you acquainted with these lands in controversy?

A. Yes sir.

Q. Did you ever, while acting as foreman for Mr. Tuttle, notify Mr. Blassingame to quit the possession of these lands?

A. Yes sir.

Q. Do you know what time that was?

A. No sir, I do not; it was directly after he come there, along in the spring.

Q. How long had he been in possession of these lands before you notified him to quit the possession of them?

A. I don't know just how long, but it wasn't very long.

120 Q. As much as a month?

A. It wasn't over 30 or 40 or 50 days; a month or two months; shortly after he came there.

Q. Did he quit the possession of the lands?

A. No sir.

Q. Did he continue to occupy them?

A. Yes sir.

Q. Did you ever notify him more than one time?

A. No sir, not him; I told his men when they went to plowing—

Contestee objects.

Cross-examination.

By Mr. Bailey:

Q. You say you notified Mr. Blassingame, to quit possession—did you just simply tell him that Mr. Tuttle wanted him to get off?

A. Yes sir.

Q. Do you know when Mr. Blassingame got that land?

A. No sir.

Q. What year was it when he moved on it?

A. I don't recollect just the year; some five or six years ago.

Q. And about a month after he took possession, you told him Mr. Tuttle wanted him to get off?

A. It was sometime after, I don't know exactly how long.

Q. You don't know how long he had been in possession of the land conveyed to him by Mrs. Campbell?

A. No I don't.

Q. Do you know who was living on that place prior to the time Mr. Blassingame moved on the lands in controversy here? Do you know who was in possession of the lands in controversy here before Mr. Blassingame?

A. Mrs. Campbell for the time being.

Q. Do you know what improvements were on this land at the time Mr. Blessingame took possession?

121 A. There was a four wire fence around the pasture and the farm, 75 acres fenced inside of the pasture, and twelve acres in one field and 75 acres in another, broke land.

Q. I will ask you Mr. Ladd, if you ever approached Mr. Blessingame after he went into possession of this land and offered to trade him certain lands that you were holding at that time for the lands in controversy here.

A. I never held any land at that time and never made a land trade with Blessingame in my life.

Q. I mean the lands just west of the lands in controversy here, I think Bailey owned at the time?

A. No sir.

Redirect.

By Mr. Bond:

Q. Do you know who exercised control and supervision over this land in controversy from the time of Mr. Campbell's death up to the time Mr. Blessingame bought it?

A. Mr. Tuttle was guardian of the estate.

Q. Did Mrs. Campbell hold this land Mr. Tuttle when she was in possession of it?

A. Yes sir.

Contestees object, unless he shows how he knows.

By Mr. Bailey:

Q. I will ask you if you know who received the rents from that 75 acres prior to the time Mr. Blessingame purchased it and took possession?

A. Who received the rents off of it?

A. Yes sir?

A. Mrs. Minter worked the land herself with her teams.

122 Q. Do you know who received the rents from it?

A. She got it.

Contestants rests.

April 28, 1904, 9 a. m.

Mr. Bond: I desire to offer in evidence here a certified copy of the last will and testament of C. L. Campbell, deceased and ask that it be made a part of the record and marked "Exhibit C."

Mr. Bailey: The contestees reserve an exception as we are not informed that the contestants were unable to secure the original, which should properly be offered in evidence; and that the pretended certified copies offered here show no proper authentication or certification of officers of a court of the Choctaw and Chickasaw Nation.

Mr. Bond: We also desire to introduce in evidence a certified copy of the record of the county and probate court of Pontotoc County,

showing the qualification and appointment of the testamentary executor and the testamentary guardian under the last will and testament of C. L. Campbell, deceased and ask that it be made a part of the record and marked "Exhibit D."

Mr. Bailey: The contestees object for the same reasons as stated above.

123

*J. W. Blassingame.*

J. W. BLASSINGAME, a witness for the contestees herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bailey:

Q. State your name?

A. J. W. Blassingame.

Q. Your age?

A. Fifty-one.

Q. Your place of residence?

A. Chickasha.

Q. How long have you lived at Chickasha?

A. About six years—between five and six.

Q. Mr. Blassingame, are you acquainted with the land that is in controversy in this action, wherein Dave Hill for his minor heirs and ward are contesting certain lands against Charles O. Reynolds for his minor heirs?

A. Yes sir.

Q. I will ask you Mr. Blassingame, if you were ever in possession and control, in ownership, of the lands being contested for?

A. Yes sir.

Q. Tell the Commission when that was.

A. I came in possession of it January 21, 1899.

Q. From whom did you secure the lands?

A. From Mrs. S. L. Campbell.

Q. Did you receive a written conveyance from her for the lands?

A. Yes sir, I got a bill of sale.

Q. Have you that conveyance now?

A. Mr. Reynolds, I think has it.

124 Q. I will ask you to look at this instrument, (handing witness paper)—and say if that is the same instrument you received from Mrs. S. L. Campbell?

A. Yes sir, this the same one.

Q. Are you acquainted with the signature of Mrs. S. L. Campbell?

A. I have seen her signature a good many times.

Q. Did you see her sign that instrument?

A. Yes sir.

Contestee here offered said bill of sale in evidence, same being marked Exhibit E.

Mr. Bond: Counsel for Contestants object to the introduction of

this instrument for the reason that J. H. Tuttle, testamentary guardian, had absolute control of the lands pretended to be conveyed in this instrument, and the same were to remain in trust, held by him, and that it has not been shown that Mrs. S. L. Campbell who was to receive a child's part of these lands, had any right to convey the same.

Q. I will ask you, Mr. Blassingame, if the lands conveyed to you by this instrument are the same lands that are being contested for here?

A. I bought that with other lands.

Q. The lands that are being contested for here, then, are included in the same lands that are conveyed in this instrument?

A. Yes sir.

Q. Did you pay Mrs. S. L. Campbell, who is now Mrs. Minter, a consideration for the lands conveyed to you in this instrument?

A. I paid Mrs. S. L. Campbell for the north part of the land, and I paid her husband, after she had married him, for the land that is not in controversy.

125 Q. What do you mean by the north part of the land?

A. That is what we call the north part of the land because the Purcell Road runs right between the two pieces of land. We call one the north part and one the south part, in between the two Bitters.

Q. If you know, state if any of this land you speak of as the north part of the land is being contested for?

A. None of it being contested for at all.

Q. What consideration did you pay Mrs. Campbell, who is now Mrs. Minter, for the lands included in the contest here?

A. I paid her \$270—paid her husband \$270.

Q. Was all that in money?

A. Yes sir.

Q. What did you pay for the other part of this land.

A. I paid \$250 in money.

Q. I will ask you when you purchased this land from Mrs. S. L. Campbell?

A. I bought it on the 21st day of January, 1899.

Q. How long after you bought it was it until you went into possession of it?

A. It was a month, or more than a month.

Q. Did you take complete possession of it at the beginning?

A. I started to take possession of it; a man by the name of Sherwood spoke to me and said he had a lease from Mrs. Campbell—

Contestants object as to what Sherwood said.

I went back to her and told her that a man was living on her place and wouldn't let me have that land she sold me, and I said what are you going to do about it and she sent me back to him to buy him off.

126 Q. Who was that man?

A. Dink Sherwood.

Q. How did you get him off?

A. She bought him off.

Q. Was he leasing this land at that time?

A. He was.

Q. Do you know from whom?

A. Mrs. Campbell.

Q. Did Sherwood remain on the place?

A. He remained until she went to the bank and put up the money, and the bank told him that when he got his land load out of the house the money was ready at the Citizens National Bank for him, \$400, and that she was to send somebody there to know when he moved before she would give up the money. They satisfied her he was off and then he went to the bank and got the money. They I went out there and remained in peaceable possession of it nearly five years—a little over four years.

Q. What house was Sherwood in?

A. In the house she now lives in, that is, the old Campbell homestead.

Q. What time of the year was it when you secured possession of these premises?

A. Sometime in February, 1899.

Q. Did you make a crop there that year?

A. Yes sir.

Q. Who was in possession of the lands there the next year?

A. I was. She was in possession of her part and I was in possession of mine.

Q. I am speaking of the lands in controversy?

A. I was in possession the next year.

Q. Did you make a crop there that year?

127 A. Yes sir.

Q. Who was in possession the next year?

A. I was.

Q. Did you make a crop?

A. Yes sir.

Q. During this time, did you pay rents to anyone?

A. I did not.

Q. At the time you purchased this land from Mrs. S. L. Campbell, what amount of improvements was on the land?

A. There was a little bit of a piece of land on the east side of West Bitter, maybe 10 or 12 acres, and down further towards Mrs. Campbell's house probably 60 or 70 acres.

Q. That was fenced off from the pasture?

A. Yes sir.

Q. Do you know if it was in cultivation?

A. It was broke up; a fellow had tried to cultivate it that year but hadn't made anything; I don't think he plowed it at all.

Q. Was that all the improvements on it?

A. Yes sir, except the fence.

Q. How long did you remain in control and possession of these premises?

A. Right about five years.

Q. What was the amount of improvements on the place when you disposed of it?



A. There was three houses and three wells; two barns—small barns, and two granaries that would hold 8,000 bushels of wheat; it cost me in the neighborhood of \$2500.

Q. What amount of ground was broken?

A. It was all broken but just two or three little patches,  
128 one on the north side of the fence and a little bit on the—  
it was all on the north side, and some little bit down where the water stood on it.

Q. I will ask you what was the nature and character of this land when you bought it?

A. At the time I bought it, I didn't know what it was. I told her I wanted five allotments; she said she had them, so she sent Frank Plato with me and showed me what they call the north horse pasture in between the Bitters. We went over the prairie part of it first and then down in the bottom. I said, I've got to have more land than this if I buy this. We went down on the east side of East Bitter and he showed me that land, and I said, I will buy this with the other. Then before we closed the trade we went back to Mrs. Campbell. I did not buy it until she went to Minco. She didn't sell me the land on the east side, what I wanted. She says, I have a mile square on the east side of West Bitter that I will sell you. I said, I never seen that so some kind of talk come up like anybody will that is trading, and finally she says, I will let you have it for twenty yearlings. I says, I can't give you but fifteen. We settled for eighteen and I got it for eighteen Chickasaw yearlings. During this time I was to turn over the yearlings to pay for the place she married Dr. Minter, and when it come time to turn over the yearlings in June he wouldn't take the yearlings and I give him \$270, then, for the eighteen yearlings.

Q. What was the nature and character of that land at the time you bought it?

A. I didn't know at the time.

Q. What was the nature and character of it the first time you saw it?

A. There was a lot of water on it that looked like a lake  
129 I was dissatisfied with it.

Q. I will ask you to describe the lands that you purchased from Mrs. S. L. Campbell?

Contestants object on the ground that the quit-claim deed introduced in evidence is the best testimony.

By the Commission: He has stated that the quit-claim deed covers more land than is involved in this controversy.

Objection withdrawn.

Q. Describe the land that is in contest here as purchased by you from Mrs. S. L. Campbell.

A. There was one little piece of ground east of West Bitter, ten or twelve acres broke out, and then the other field was 60 or 70 acres in other words the beginning corner that this bill of sale calls for south of the Purcell road and east of West Bitter was a little field of ten or twelve acres. Right about a quarter from that field was

another little field, along the east line of my line on that section was 60 or 70 acres broke out, fenced off to itself. Between those two fields there was elm grubs, small thickets. South of the field there was a dog town. East and southeast I suppose there was 200 or 250 acres that was most of the time under water; so I looked around and I had done brought it and I went to work and had it drained; I give a fellow the rent of the place and another \$25 to plow ditches there.

Q. I will ask you if the land taken possession of there by you included in this contest followed the section lines, or is it bounded by other means than the section lines?

A. I had to go from what Mrs. Campbell told me; I took possession of the land inside of the forks of the creek supposing it to be a mile square.

Q. I will ask you if during the time you were in possession and control of this land, anyone else ever set up any claim to it?

A. Three years, about, after I had owned the land I got a written notice from Holding & Bond as attorneys for Jim Tuttle and Dr. Minter claiming the land.

Q. I will ask you if you were ever advised that any suit had been instituted. Do you know if any suit was ever instituted by Mr. Tuttle or Dr. Minter for the possession of this land?

A. There was not.

Q. I will ask you if, after you went into possession of this land, you ever had a conversation with Mr. James Tuttle concerning the transfer and control of the lands in contest here?

A. Yes sir.

Contestants object unless time and place of conversation are shown.

Q. I will ask you if a short while after your purchase of these lands you had such a conversation with Mr. Tuttle in the City of Chickasha?

A. In February, about the 14th or 15th, they sent me word. I was following those lines, I had got it without seeing it, and it seemed to go here a hundred yards south on the Purcell Road, to commence at that corner and then commence and run across the creek, and it was understood when she sold me the place that I didn't get no house.

Contestants object to what was understood, the quit claim deed being in evidence.

Tuttle sends me word, I don't know who by, that he wanted to see me. Tuttle says I understand you are going to run across into the Campbell estate on that deed that you claim under Mrs. Campbell. No, I says, you are mistaken, Mr. Tuttle, I am just going to the creek. I didn't buy no house and didn't get no house, and from the corner that I see they claim as the commencing point would leave me 80 acres in the upper end of the field. That was right in front of Pettyjohn's drug store in Chickasha; That was about the 14th or 15th of February, 1899.

Q. I will ask you if you are the owner and in possession of the lands in controversy here at this time.

A. I am not, I sold it to Mr. Reynolds there.

Q. When did you dispose of these lands?

A. It was about the 10th of December, last.

Q. Do you know who is in possession of them at this time?

A. Mr. Reynolds is in possession of them, except about 80 acres.

Q. Are you acquainted with the 80 acres of land, a part of the land that is now contested for here, that has been enclosed by a fence and claimed by Mr. Hill.

A. Yes sir.

Q. I will ask you if at the time you purchased the lands from Mrs. Campbell, you also took possession of that land?

A. I certainly did; that was inside of the fence I bought from her.

Q. Did you control and cultivate that land?

A. I broke it out the second year, all but a little bit that was too wet.

Q. Did you remain in control of it until you transferred your interest.

A. Yes sir.

Q. Do you know how long Mr. Hill had been in possession of that?

A. He fenced it off the first day of last January a year ago; had it fenced. It was about half past eleven when he got out there; I never knew anything about it until he got it fenced.

Q. You say you broke that land out?

A. Yes sir.

Q. How long were you in control after that?

A. Three years. I got three crops off of it.

#### Cross-examination.

By Mr. Bond:

Q. You testified that you bought two pieces of land from Mr. Campbell?

A. Yes sir.

Q. One north of the road and the other south of the road?

A. Yes sir.

Q. How much did you say you paid for the land north of the road?

A. I paid \$250.

Q. How many acres were in that piece of ground?

A. I never measured it, I don't know. She claimed there was 800 or 900 acres, but she said for me to go and look at it.

Q. Don't you know there is something like 1200 or 1500 acres in that north pasture?

A. I would be willing to give \$40. an acre if there was, if a man will give me ten for all there is under 1400 acres.

Q. Yes, you only paid \$200 for it?

A. I only paid \$250; that was all she asked.

Q. Then you claim to have bought some land south of the road, and that land south of the road is this land in controversy here?

A. Yes sir.

Q. Was not that land south of the road nearly all bottom  
133 land?

A. Yes sir.

Q. And yet you only paid two hundred and some odd dollars for it?

A. I paid \$270.

Q. At the time you bought this land did you not know that J. H. Tuttle was guardian for the Campbell heirs?

A. I didn't know only what she told me.

Q. How long had you been living in or around Chickasha at the time you purchased this land?

A. I never had been there but once.

Q. Did you not go to Mrs. Campbell and tell her that if she did not sell you this land she would be fined five hundred dollars?

A. I never knew anything about the Indian police and never told her that or nothing like that.

Q. Did you not send a man to her who did?

A. I did not.

Q. Did Mrs. Campbell read this deed, or did you have it read to her?

A. Her lawyer read it to her.

Q. Was it your lawyer, or hers?

A. She took me to him; I never saw him until then.

Q. Is it not a fact that Mrs. Campbell did not read this deed, and that she told you at that time that she only intended to sell the land north of the road except about forty acres down there east of West Bitter Creek?

A. She certainly told me she wanted to sell that whole section south of the Purcell road.

Q. You testify that you had been in the peaceable possession of this land since the time you purchased it? It is not a fact that you knew all the time that Mr. Tuttle had an adverse claim; that he was claiming it for the Campbell estate?

134 A. I never heard of it.

Q. Did not George Ladd come to you shortly after you moved on this land and tell you to quit the possession of this land?

A. George Ladd certainly come to me and wanted to trade me 320 acres that the Campbell Children, I don't know which, sold to Mr. Bailey.

Q. Did he not come to you and tell you to quit possession of that land?

A. He did not.

Q. Didn't he tell you that he came as Mr. Tuttle's foreman and that Mr. Tuttle claimed that land for the Campbell heirs?

A. He did not.

Q. You testified in your direct examination that you had a conversation with Mr. Tuttle about this land. Did you have a conversation with Mr. Tuttle?

A. I certainly had one, right in front of Pettyjohn's drug store.

Q. You are absolutely positive of that?

A. I sure did.

Q. You are just as positive as to this conversation with Mr. Tuttle, as you are of anything else you have testified to?

A. I think Mr. Tuttle will say I did too.

Q. Why did you not issue a subpoena for Mrs. Minter to be present at this trial?

A. Because I didn't want to.

Q. Do you intend to take in allotment for yourself or any of your heirs this land in controversy?

A. No sir.

Q. You are absolutely sure that George Ladd didn't come to you and tell you to quit the possession of this land?

A. Yes, I am sure of it.

Q. Were you ever indicted by a grand jury for perjury?

135 A. I was by George Ladd swearing to a lie.

By Mr. Melton:

Q. Were you ever convicted in a court at South McAlester of obtaining money under false pretenses?

A. I was accused and got clear of it.

Q. Were you ever convicted by a jury?

A. No, it never for to the jury. I was in jail twenty days; as soon as I got a trial, I come clear of it.

Q. To whom did you sell this land?

A. I sold it to J. W. Brimmage.

Q. What did you get for it?

A. I was to get \$1500.

Q. Did you get it? Did Brimmage pay you anything for this land?

A. I had to go and buy him off. He paid me fifty dollars on the trade and was to give me a note and I gave him back his note; he gave two notes for \$1500.

Q. He paid you fifty dollars for this place?

A. Fifty dollars on the trade.

Here the contestees requested permission to introduce in evidence the transfers that should have been indentified and introduced in direct examination; one being a quit-claim deed from J. W. Blassingame to the man Brimmage; and the other a transfer from him to Charles O. Reynolds, in order to complete the chain of title; same being marked Exhibits F and G, respectively.

Redirect.

By Mr. Bailey:

Q. I will ask you to look at these instruments and state what they are, and if that is your signature (Handing witness papers).

A. This is the deed that I sold to Brimmage.

A. Is that your signature?

136 A. Yes sir.

(The instrument referred to is a deed from Jas. W. Blassingame to Jno. W. Brimmage; marked "Exhibit F.")

Q. Look at this other instrument and state what it is?

A. This is the transfer that Brimmage had to Reynolds.

Q. Did you see Brimmage sign that?

A. Yes sir.

Mr. Bailey: The Contestees now offer in evidence a bill of sale from J. W. Blassingame to John W. Brimmage for the lands here in contest, which said bill of sale bears assignment from the said John W. Brimmage to Charles O. Reynolds for the said land, and ask that the same be marked "Exhibit G."

Q. Now I will ask you to state if you have ever been paid by Mr. Reynolds or by Mr. Brimmage for the lands transferred under these instruments?

A. Yes sir, I have been paid.

Q. Who paid you?

A. Mr. Reynolds.

Q. Why did Reynolds pay you instead of Brimmage?

A. You understand I went to Mr. Reynolds and told him that as Brimmage could not pay me, I would go and get the release from Mr. Brimmage if Mr. Reynolds would pay for the place. So I went to see Brimmage and got the release; then he paid me five hundred dollars down and gave me a note. I forget now how long the note was for, but he paid it when it was due.

Q. What was the amount?

A. One thousand dollars.

Q. Then Mr. Brimmage simply transferred his rights to Mr. Reynolds?

A. That was the way it was.

137 Q. You were asked awhile ago if you were ever indicted for perjury in the court at Chickasha. What became of that indictment?

A. They threw it out of court.

Q. Were you ever tried?

A. No sir, it was dismissed.

Q. You were asked if you were ever indicted for obtaining money under false pretenses at South McAlester. What became of that indictment?

A. That was throwed out.

Q. Do you know where the heirs of the Campbell estate—Mont, Holmes, Rex and John—have taken their allotments?

A. I have a pretty good idea, yes sir.

Q. Is it on the old Campbell place?

Contestants object unless he knows.

A. The youngest ones are located on the old Campbell place.

Q. Where are the old ones?

A. I don't know where they are located; they have sold their land out they had there.

Q. Do you know how much land Mr. Campbell was holding there at the time of his death?

A. I do not. I have a pretty good idea.

Recross.

By Mr. Bond:

Q. Do you know whether any of the Campbell heirs have filed upon the lands and taken them in allotment?

A. I do not; I only know their holdings.

By Mr. Melton:

Q. This quit-claim deed from you to Brimmage was executed on the 10th day of December, 1902? There was a suit pending in the court at Chickasha for the possession of that place at that time, was there not?

A. I think there was.

Q. Brimmage knew of that, did he not?

A. Yes.

Q. He knew of it when you executed this bill of sale?

A. He said he did.

Q. Brimmage transferred his quit-claim deed to Mr. Reynolds on the 6th day of March, 1903. Do you know whether or not at this time Mr. Reynolds knew that this suit was pending in the United States Court against you for the possession of that land?

A. I don't know whether he did or not.

Q. Did you not tell him of it?

A. I don't believe I did; I don't think I told him.

Q. Do you know whether or not anyone else told him?

A. No.

Q. You say you received \$1500 for this place?

A. I did.

Q. And the entire consideration had been paid?

A. Yes sir, he don't owe me one thing.

Q. You are acquainted with these lands?

A. Yes sir.

Q. Are you acquainted with the value of Indian lands up in that locality?

A. No sir.

Q. You are acquainted with these lands and the value of lands of that character in that county?

A. I don't know whether I understand the value of them or not.

Q. What difference, if any, was there in the value of these particular lands in 1903 and 1899?

A. That particular piece of land?

139 Q. Yes.

A. I suppose about three thousand dollars difference in the price of it.

Q. It was worth three thousand dollars more in 1903 than it was then?

A. That was my estimate.



Q. So you sold an eight thousand dollar place for fifteen hundred dollars?

A. No, the two of them.

Q. You asked Mr. Hill five thousand dollars for this place immediately after you had paid two hundred and fifty dollars for it?

A. I paid five hundred and thirty dollars and put twenty-five hundred dollars in two houses, two barns, dug three wells, changed the fence and broke out I suppose 125 or 150 acres.

Q. You had not done all that when you telegraphed Dave Hill and asked him five thousand dollars?

A. I certainly had; I commenced right in February and done all this work and I had 150 acres nearly, on the other place broke out.

Q. You testified that this land was worth three thousand dollars more in 1903 then it was in 1899?

A. I told you it might be that.

Q. If it was worth five thousand dollars in 1899, what was it worth in 1903?

A. I told you I didn't know; I don't know what it is worth now.

Q. You took fifteen hundred dollars for it?

A. No, I got thirty-five hundred dollars for the two places.

Q. What two places?

A. The two places you were asking me about.

Q. I am asking you about the land in controversy?

A. I thought you were talking about both of them. I  
140 offered them to Dave Hill for five thousand dollars; I included it all that I got from Mrs. Campbell.

Q. You offered to sell this land to Scott Jones, didn't you?

A. Yes.

Q. For how much?

A. Two thousand dollars.

Q. Scott didn't take it did he?

A. No.

Q. Brimmage would not pay you until he got the land?

A. He wasn't afraid of that; he said he wasn't.

By the Commission:

Q. Where did you come from to Chickasha, Mr. Blassingame?

A. I came from Purcell.

Q. And where from Purcell.

A. South McAlester.

Q. And where from to South McAlester?

A. Denison, Texas.

Q. What business are you in?

A. Hide business and cattle business.

Q. Buying up hides and selling them?

A. Yes sir.

Q. You stated that you had been arrested for obtaining money under false pretenses at South McAlester?

A. Yes sir.

Q. And also that you had been indicted for perjury?

A. Yes sir.

Q. Were you ever arrested for any other crime?

A. No sir.

Q. Either in Denison or South McAlester?

A. No sir.

141

*Frank W. Plato.*

FRANK W. PLATO, a witness for the contestees, herein, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Bailey:

Q. State your name?

A. My name is Frank Plato.

Q. Where do you live?

A. I live north by east two miles from Chickasha.

Q. In what business are you engaged?

A. I am a farmer.

Q. How far do you live from the lands in controversy here?

A. About four miles, I reckon.

Q. Are you acquainted with Mrs. S. L. Minter, who was Mrs. S. L. Campbell?

A. Yes sir.

Q. How long have you known her?

A. I have known her personally about fifteen years; knew of her twenty-five years.

Q. Were you acquainted with C. L. Campbell in his life-time?

A. Yes sir.

Q. When did he die?

A. I don't know the exact date. I should judge he must have died in about 1897.

Q. He has been dead seven or eight years?

A. Yes sir.

Q. Do you know, Mr. Plato, how much land was held by Mr. Campbell at the time of his death?

Contestants object as incompetent and irrelevant.

Counsel were here informed by the commission that there was no law in existence in 1896 that would prevent a man from  
142 having excess holdings; the act of Congress not having been passed limiting them to any particular tracts or authorizing them to select their allotments.

A. Approximately yes. Altogether he had a good many thousand acres of land; I couldn't say exactly how much.

Q. About how much, to the best of your knowledge and your acquaintance there in that country?

A. I should judge he had twenty thousand acres altogether—I don't believe he had quite twenty thousand acres; probably fifteen thousand would cover it.

Q. Were you acquainted and familiar with the lands conveyed by Mrs. Campbell to Mr. Blassingame, at the time those lands were conveyed to Mr. Blassingame?

A. Yes sir.

Q. I will ask you what improvements were on those lands at that time?

A. There was some fences and two small fields in cultivation.

Q. Were you acquainted with these lands and familiar with them at the time Mr. Blassingame conveyed them to Mr. Brimmage or Mr. Reynolds?

A. I have been there, of course; haven't been over the lands but have been by there several times.

Q. What improvements were on the place at that time?

A. It was nearly all in cultivation and several houses, and I think a granary; small houses, one or two.

Q. Practically all in cultivation?

A. Yes sir.

Q. State if you know Mr. Plata who was in possession and control of the lands transferred to Mr. Blassingame by Mrs. Campbell at the time those lands were transferred to Mr. Blassingame?

A. I don't know exactly who was in possession; I know Mrs. Campbell was living on the land.

143 Q. Who was cultivating these lands at the time of this transfer?

A. I could not say exactly who was cultivating that land. I know they were having some trouble over it. I don't want to commit myself there; I can't say who was cultivating them.

Q. Do you know when Dink Sherwood was in possession of and cultivating the land?

A. I was about to say I thought he was cultivating those lands but I don't know it positively.

Q. Do you know what years he did cultivate that land?

A. I am satisfied that Dink Sherwood had possession of Mrs. Campbell's house at the time that trade was made; I am satisfied of that.

Q. The Campbell home place?

A. She let him move into her home house.

Q. How far is the Campbell homestead from the lands in controversy here?

A. The lands run up to within, I should judge 600 yards of the house.

Q. Do you know, Mr. Plata, whether or not at the time Dink Sherwood was living in the Campbell house he was cultivating the lands, or part of the lands, in controversy here?

A. Yes sir he was.

Q. Do you know from whom or under whom he was renting that land at that time?

A. No sir, I do not.

Q. Do you know when Mr. Blassingame went into possession and control of these lands?

A. Not the exact day of the month; I know the year.

Q. State when that was?

A. I should judge it was about five years ago, about '98 or '99, one of those years.

144 Q. Had he remained in possession and control of the lands since that time, if you know?

A. I suppose so. I certainly know him or the man he sold to has been in possession of it; I don't know that he has.

Q. Do you know who is in possession and control of the land at this time?

A. I heard Charley Reynolds is.

Q. Do you know Mont Campbell?

A. Yes sir.

Q. Do you know whether Mont Campbell is living on a part of the old Campbell place at this time, or not?

A. Now, yes sir.

Contestants object as incompetent, irrelevant and immaterial.

Q. Do you know Holmes Campbell?

A. Yes sir.

Q. Do you know where he is living now?

A. He is living with his mother, I suppose; he makes his home with his mother.

Q. Do you know Mrs. S. L. Minter?

A. Yes sir.

Q. Where is she living at this time?

A. She is living on her homestead.

Q. The old Campbell place?

A. Yes sir.

Q. Do you know Rex and John Campbell?

A. Yes sir.

Q. Do you know where they are living at this time?

A. Yes sir, staying with their mother, but they have got their home on the old Campbell place; John, I think stays on his own place and Rex with his mother.

Q. Do you know L. A. Campbell, commonly called "Bud"?

A. Yes sir.

145 Q. Where is he living at this time?

A. He is living at Minco.

Cross-examination.

By Mr. Bond:

Q. You testified that Mr. Campbell at the time of his death was holding something like 15,000 acres?

A. I should judge about that much; prairie land and all.

Q. You were fairly acquainted with his holdings?

A. Yes sir.

Q. Is it not a fact that most all of this land was prairie land?

A. Yes.

Q. It was rough, broken land, was it not?

A. Yes sir.

Q. About how much of the holdings of Mr. Campbell at that time was bottom land—a rough estimate to the best of your knowledge?

A. Something between 2,000 and 2,500 acres was bottom land.

Q. About how much of that land, in your judgment, was in cultivation?

A. Somewhere in the neighborhood of 1200 or 1500 acres; possibly more, possibly less.

Q. You were acquainted with the home place where he lived?

A. Yes sir.

Q. You were acquainted with the house?

A. Yes sir.

Q. In your judgment about how much was that house worth there, his home place?

A. Thirty-five hundred dollars.

Q. You were acquainted with his barn at the home place—how much was that worth?

Objected to by Contestees as incompetent and immaterial.

146 Q. This land lying immediately around the house there in cultivation is all bottom land?

A. Yes sir.

Q. You are acquainted with Mr. Minter, the husband of Mrs. Minter?

A. Yes sir.

Q. Do you know whether or not he is holding an allotment on that place there?

A. Yes sir, he is holding an allotment.

Objected to by Contestees as incompetent and immaterial.

Q. Do you know whether or not he is holding an allotment for his child there?

A. Yes sir.

Contestees object for same reason as above.

Q. This land in there is all bottom land?

A. All bottom land, yes.

Q. Mr. Plato, were you present when the sale of this land from Mrs. Minter to Mr. Blassingame was consummated?

A. Not at the time; I was there when the trade was started. I came there heard the papers read afterwards. She had sent me to make this horse pasture trade on the north side of the road; I took Mr. Blassingame out there to make this trade, and in fact sold him the horse pasture. Then he wanted to buy this other land and he asked Mrs. Campbell what should — take for that. She told him she couldn't sell that land without seeing Mr. Tuttle. At that time Mrs. Campbell was living in town and I was running a livery stable in town at that time. She told him she would go and see Mr. Tuttle, and we set a time to meet at Shepherd's office to fix up the papers on the horse pasture. I had never heard anything about this land in controversy entering in the trade anywhere at that time, and

147 when Mrs. Campbell came back from Minco I went to the house after her and took her down to Shepherd's office, and

while they were fixing the papers on this horse pasture Mr. Blassingame made a proposition to her about a mile square of this land from the road down, and Mrs. Campbell never asked me no question about it. I expected her to ask me what I thought about it, but she didn't and it was none of my business. I turned and walked on and stayed out until the trade was closed. After the papers were signed I came back and heard them read and saw her sign them. That is all I know about the place at all.

Q. Did she say anything up there that day about having to see Mr. Tuttle about the sale of that land?

A. There was nothing said about the sale; she said she was going to see Mr. Tuttle about the land on the east side of the creek.

By the Commission:

Q. Was Mr. Blassingame informed about the land held by Mr. Tuttle for these children at the time he made this trade, either by you or by Mrs. Minter?

A. I think that he was, because I am satisfied that I told him that Mr. Tuttle—in fact he knew that Mr. Tuttle was administrator of the estate. Everybody knew that that lived in that country.

Q. Did he know that these particular lands were being transferred to him in which the estate owned the interest?

A. I couldn't tell you that. When she came to me to go sell this horse pasture I think she told me, but I am not positive of it that Jim had given her permission to sell that horse pasture.

Q. Is that part of the land that was set aside for the minor children?

A. That was part of the estate; it was not part of the home farm. It was high, hilly, prairie land.

148 By Mr. Melton:

Q. That was not a part of the land in controversy?

A. No sir.

Q. Was Mrs. Campbell present when Mr. Blassingame told you that she would have to see Mr. Tuttle about selling that land?

A. The land east of the house, yes sir, Mr. Blassingame was present. That was when I went in from the sale of this horse pasture. I made the trade with him and drove directly to her house and told her I had sold the pasture to Mr. Blassingame, and told her also that Mr. Blassingame wanted to buy this land across East Bitter Creek, and she told him she couldn't sell that land without seeing Mr. Tuttle.

By the Commission:

Q. Was that the land in controversy?

A. No sir, that land is not in controversy.

Q. East of Bitter?

A. East of Bitter; that is the land that Dr. Minter or his daughter has now allotted.

## Redirect.

By Mr. Bailey:

Q. Mrs. Minter—Mrs. Campbell—told Mr. Blassingame she could not dispose of the land east of East Bitter without Mr. Tuttle's consent?

A. Yes sir.

Q. That land is not involved in this suit?

A. No sir.

Q. Did you hear Mrs. Campbell say anything to Mr. Blassingame about not being able to dispose of the land that is in litigation here without Mr. Tuttle's consent?

149 A. At that time?

Q. Yes sir.

A. Not at that time, but I did later on. After the trade on the horse pasture had been made, when we went to Shepherd's office to draw up the papers, then Mr. Blassingame made the proposition to her for this land, a mile square.

Q. Was anything said at that time as to who owned this land, in litigation here?

A. I have no recollection of it.

Q. Was anything said as to Mr. Tuttle having to give his consent?

A. No sir, I have no recollection of that.

Q. You heard this deed read to Mrs. Campbell?

A. Yes sir.

Q. Did the deed as read to her convey this mile square south of the Purcell road?

A. Yes sir.

Q. Did you see Mrs. Campbell sign that deed?

A. I did, yes.

Q. Do you know who witnessed that deed at that time?

A. Floyd Herman I believe was one of them.

Q. I will ask you if it was Mr. R. W. Shepherd, the lawyer?

A. I believe it was.

Q. Now, Mr. Plato, are you familiar with the general values of lands, the prices of lands, as they ranged in the vicinity of this Campbell place during the years of 1898 and 1899; do you know what such land was selling for at that time?

A. At that time there were but few transfers; I don't know. Probably there were some very good prices, owing to the improvements; and some did not bring good prices.

150 Q. I will ask you if lands at that time were not selling simply for the value of the improvements on them?

A. Yes sir.

Q. Is it not a fact that at that time there was a current belief and information among the people, the citizens of the Chickasaw Nation, that their allotments would be cut down to a certain number of acres?



Objected to by Contestants as incompetent, irrelevant and immaterial.

Q. That is true is it not?

A. Yes sir.

*W. D. Bailey.*

W. D. BAILEY, a witness for the Contestees herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bailey:

Q. State your name?

A. W. D. Bailey:

Q. What is your age, Mr. Bailey?

A. I am so old I have forgot; forty-seven I believe.

Q. Where do you live?

A. I live four or five miles east of Chickasha.

Q. Are you acquainted with the land in controversy?

A. Yes sir.

Q. How far do you live from these lands?

A. It is about a mile and a quarter from my house.

Q. How long have you been familiar with these lands?

A. I was there before there was ever a fence, before Campbell fenced it.

Q. Were you acquainted with these lands in the year 1899?

151 A. Yes sir.

Q. Tell the Commission what was the condition and the amount of improvements on these lands at that time.

A. I never measured the land, but I suppose in the two patches of land there was about 23 acres, maybe more or less, broken land. There was a little patch over on the creek, close to a dugout, and some towards Mrs. Campbell's house.

Q. This land in controversy here is part of the old Campbell land?

A. Part of the old Campbell estate, the land he owned.

Q. Were you acquainted with C. L. Campbell?

A. Yes sir.

Q. Was he a white man or an Indian?

A. White man.

Q. Do you know how much land he was holding at the time of his death?

Objected to by Contestants as incompetent, irrelevant and immaterial.

A. I could not tell you to save my life; he was holding quite a lot in that pasture on Bitter Creek; I don't know how much pasture there was there.

Q. I will ask you if you know how much in cultivation he was holding at that time?

Contestants object for same reason as above.

A. He had in, I suppose, not under 1,200 acres, maybe 1,500; I don't know, exactly as to the amount of cultivated land he had in, but suppose about 1,200 acres.

Q. I will ask you if you ever bought any land, a part of the old Campbell place, from Holmes Campbell?

A. Yes sir.

Q. How much?

152 A. I bought 320 acres.

Q. When was that?

A. It was last winter, a year ago.

Q. Was that land you bought from Holmes at that time a part of the old Campbell place?

A. Yes sir.

Q. I will ask you if you are familiar with the land in litigation here; and if you were familiar with the land in litigation at the time Mr. Blassingame sold it?

A. Yes, I was living there.

Q. What improvements were on that land at that time; at the time he sold it?

A. Now, I said I was familiar with it; really I am not; I think he had two sets of houses and a couple of granaries, something like that.

Q. What part of it in cultivation?

A. Quite a lot of the land, in cultivation; I guess probably 400 acres, just to guess at it.

Q. Do you know who was in possession and control of that land in 1899?

A. I don't know who was in possession of it, whether Mr. Blassingame was or not; the place never has been owned except by the Campbell estate and Mr. Blassingame.

Q. Do you know who was in possession of it the next year?

A. I am not going to say about the possession of the land in a certain year.

Q. Do you know how long Mr. Blassingame has been in possession?

A. He has been in possession of the place about four or five years; five years, I think.

153 Cross-examination.

By Mr. Bond:

Q. Do you know Mrs. Minter, the widow of C. L. Campbell, deceased?

A. Yes sir, very well.

Q. Do you know where she is now living?

A. Yes sir.

Q. What is the character of the land on the place where she now lives; is it bottom land?

A. Yes sir; that is, the farm is.

Q. Do you know her second husband, Dr. Minter?

A. Yes sir, very well.

Q. Has he selected any allotments on the old Campbell farm there?

A. Well, now, I could not tell you about that. I think Dr. Minter told me he had filed on it. I couldn't tell you anything about that.

Q. Do you know whether or not Dr. Minter's child has taken an allotment out of the old Campbell estate there?

A. I couldn't tell you about that; I don't know anything about it.

Q. Do you know what the character of the land is south and east of the house, the old Campbell house; is it all bottom land?

A. You mean that between the two creeks?

Q. Yes, is that all bottom land?

A. Yes, there may be a little hillside; I haven't been over that for several years.

Q. Have you been over there since C. L. Campbell placed a new house on the premises?

A. Since he built a new house?—Yes.

Q. About what is the value of that new house?

A. He told me it cost him, I think, forty-five hundred dollars.

154 Q. Are you acquainted with his barn there?

A. Yes sir.

Q. About what would a barn like that cost?

A. I would suppose that a barn like that would cost, say twelve or fifteen hundred dollars. It was the best barn I ever saw in the Chickasaw Nation. It was a good one.

Redirect.

By Mr. Bailey:

Q. Are you familiar with the prices that land was bringing in the Chickasaw Nation in the vicinity of the Campbell place during the years 1898 and 1899?

A. There wasn't any price so far as I know.

Q. Is it not a fact that land was simply being sold, practically for the amount of the improvements on it.

Q. Yes sir. They would sell land at all prices and any prices, but of course you could not go to a man like C. L. Campbell, nor you couldn't have bought my place, if you did you would have paid for it; but there were lots of men who would hold it for some one else for nothing, and may be they would say, here, you just sell out and get what you can and I will transfer my title.

Q. Is it not a fact that just about this time, in 1898 or 1899, a great many people were disposing of their surplus lands by reason of a law that had been passed making it a crime to hold excess lands?

A. Yes sir, lots of men were selling out excess lands.

Q. I will ask you if you know who was cultivating the land in controversy here at the time Mrs. Campbell conveyed it to Mr. J. W. Blasingame?

A. There were so many on that place—the witnesses were all talking about it since we have been down here. Dink Sherwood I think was, but I don't remember.

*Charles O. Reynolds.*

155 CHARLES O. REYNOLDS, Contestee herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bailey:

Q. Mr. Reynolds, you are one of the Contestees in this suit, are you not?

A. Yes sir.

Q. I will ask you if you are familiar with the lands in controversy here?

A. Yes sir.

Q. I will ask you who is in possession of these lands at this time?

A. I am.

Q. How long have you been in possession?

A. A little over a year.

Q. From whom did you secure possession and control of these lands?

A. Mr. Blassingame and Mr. Brimmage, together.

Q. You saw, a moment ago, a conveyance offered to Mr. Blassingame for examination, that conveyance having been assigned to you by Mr. Brimmage?

A. Yes sir.

Q. I will ask you if you ever received that conveyance?

A. Yes sir.

Q. I will ask you, Mr. Reynolds, if you have ever paid anyone for this land, and if so, how much, and to whom you paid it?

A. I paid Mr. Blassingame.

Q. What amount did you pay him?

A. Five hundred dollars down and a note for the balance, six or seven months, and when it was due I paid that; it is all paid. I paid him \$1500.

156 Q. Tell the Commission what improvements are on this land at this time?

A. They have differed a little, but there are five houses, two of them little houses, no one lives in one of them; there are parties living in the balance; two granaries; two little barns; some lots; two yard scales; three wells.

Q. What amount of this land is in cultivation at this time?

A. Most of it, there are some little patches, some on the north side not in cultivation.

Q. Yesterday, Mr. Reynolds, you heard Mr. Hill testify that a certain eighty acres of land that he claimed to be in possession of was fenced off by Mont or Holmes Campbell; you heard him testify to that fact, did you not?

A. Yes sir.

Q. I will ask you when, to your knowledge, Mr. Hill first asserted any claim to that land?

- A. I don't exactly understand the question.
- Q. Do you know when that fence was constructed there?
- A. That was before I bought the place.
- Q. I will ask you who was in possession of that land last year?
- A. Mr. Hill.
- Q. A tenant under him was in possession of the land?
- A. Yes sir.
- Q. I will ask you if you ever informed Mr. Hill that you claimed that land under your deed from Mr. Brimmage or Mr. Blassingame?
- That you claimed the rents on that land?
- A. Yes sir.
- Q. I will ask you if you ever told Mr. Hill that you laid no claim to that land and that he might have it?
- A. I never did tell Mr. Hill that.
- Q. How many children have you, Mr. Reynolds?
- A. I have four.
- 157 Q. Are you a citizen of the Chickasaw or Choctaw Nation?
- A. A citizen by marriage.
- Q. I will ask you if you have filed on the land in litigation here as the allotments of your children?
- A. Yes sir.
- Q. I will ask you if you are holding for them or for yourself land anywhere else?
- A. Holding none only for them.
- Q. Are you holding any for yourself?
- A. No sir, not any.

Cross-examination.

By Mr. Melton:

- Q. When did you purchase this land?
- A. Last March, a year ago, or I think it was in February we made the trade. I am not sure whether it was the last of February or the first of March, a year ago.
- Q. From whom did you purchase it?
- A. From Mr. Blassingame, I got Brimmage's contract through him.
- Q. You knew this land was a part of the Campbell estate when you purchased it, did you not?
- A. Yes sir.
- Q. You know Dave Hill was claiming this land when you purchased it?
- A. No, I didn't know Dave Hill was claiming it.
- Q. Did you not know there was a suit pending in the United States Court against Mr. Blassingame for the possession of it?
- A. Yes sir, and it is pending yet.
- Q. You are now a party to that suit, are you not?
- A. Yes sir.
- Q. When did you file on this land, Mr. Reynolds?
- 158 A. It was in July, I can't tell the exact date.
- Q. July, 1903?
- A. This last July.

Q. Did you ever have any conversation with Dave Hill about that land before you filed on it?

A. Yes sir.

Q. Did he tell you he was claiming it?

A. Yes sir, he told me.

Q. You read Mr. Hill's bill of sale, did you not?

A. Yes sir.

Q. You made affidavit when you filed on this land that no one was claiming it, before the Commission? Did you or did you not make an affidavit that no one was claiming this land at the time you filed on it?

A. They asked me if I had a bill of sale and I told them I did and here it was.

Q. Do you know Mr. Thompson, who lives up there on this place—old man Thompson?

A. Yes sir.

Q. Did you ever have any conversation with him about this land?

A. We talked there quite a lot.

Q. In those conversations, did you tell Thompson that you did not lay any claim to this 80 acres?

A. The 80 across the creek, but the 80 acres fenced I never told Thompson nor no one else. I told them I didn't file on the 80 across the creek.

Q. Were you ever in possession of the 35 or 40 acres of land that has been referred to in the testimony here?

A. That is fenced off; no sir.

Q. You had never been in possession of that portion of the land under this other fence, at the time you bought it?

A. No sir.

159 Q. You have never been in possession of any part of that 80 acres?

A. No sir.

Redirect.

By Mr. Bailey:

Q. That fence had been put there when you took possession of the place?

A. Yes sir.

Q. You did advise Mr. Hill that you claimed it as part of your land?

A. Sure thing.

Q. You spoke, a moment ago, of a suit filed by Dave Hill. Has that suit ever been heard?

A. No sir.

Q. Is it still pending?

A. Yes sir.

*R. Bond.*

R. BOND called as witness in behalf of the Contestees testified follows:

## Direct examination.

By Mr. Bailey:

Q. I will ask you if you were ever a member of the firm of Holding & Bond?

A. Yes sir.

Q. I will ask you if you remember during the year 1899 or 1900 Mr. James Tuttle consulting with your firm in regard to bringing suit for possession of the land in litigation here?

A. Yes.

Q. I will ask you what was done towards bringing that action?

A. Mr. Tuttle and Dr. Minter came to our office and asked us to bring suit against Mr. Blassingame for possession of the land in controversy in this suit, I think about the same land as Holding and I took the case and issued notices to Blassingame and his son, I think, to quit possession, but suit was never instituted.

Q. Nothing further was ever done in it?

A. I think Mr. Tuttle several times asked when the case would come up for trial. Dr. Minter was to furnish the money with which to file the suit; he never did furnish the funds and suit was never filed, and we put Tuttle off from time to time.

Q. This notice you served, then was simply a notice to vacate and quit possession, or your client would sue?

A. I think that was the notice.

Q. You never brought suit?

A. No, we never brought suit.

## Cross-examination.

By Mr. Melton:

Q. Do you know what time that was?

A. It was in 1899 or 1900, to the best of my recollection.

## Redirect.

By Mr. Bailey:

Q. Did you have Mrs. Minter subpoenaed to appear here?

A. Yes sir.

Q. Did you send two or three parties to persuade her to come?

A. Yes sir.

Contestants here offered in evidence, subpoena issued to Sallie Minter, with the statement that both sides desired her to appear in person and give testimony, and that every effort had been made by both sides in that behalf, but that she had refused to come; subpoena being marked "Exhibit H".



By Mr. Bailey:

Q. Mr. Bond, I will ask you to look at that (handing witness book) and say what it is, if you know?

A. The laws of the Chickasaw Nation.

Q. Do you know whether or not these laws are in force and effect?

A. In my opinion they are.

Q. You have been a practicing attorney in the Chickasaw Nation for sometime, have you not?

A. Yes sir.

Mr. Bailey:

If the Commission please. I desire to read certain laws from this volume, entitled "Constitution and Laws of the Chickasaw Nation together with the Treaties of 1832, 1833, 1834, 1837, 1852, 1855 and 1866. Published by authority of the Chickasaw Legislature by Davis A. Homer, 1899. The Foley Railway Printing Company, Parsons, Kansas." On page 200, under an act entitled "An Act Defining what shall constitute a Claim in the Chickasaw Nation", section 6:

"Be it further enacted, that any citizen who shall abandon any claim for the period of two years (it) shall become public domain of the Nation, and subject to entry by any citizen of this Nation; any act or part of Acts coming in conflict with the provision of this Act be and the same is hereby repealed, and that this act take effect from and after its passage. Approved, September 24, 1887, W. M. Guy, Governor."

I also desire to read sections 8 on page 74 of the same volume, under an act entitled "An Act in relation to Guardians, their duties etc."

"Be it further enacted, That a guardian shall not sell any property of a minor or minors, unless said minors are actually suffering for the want of means to support them, then, in that case, the Court may grant them an order to sell any property for the support of such orphan minors; and if there is any perishable property, and the Guardian can satisfy the Court, then he or she may sell such property."

Also Section 9 of the same act, reading as follows:

"Be it further enacted, That all minors shall be deemed competent to take charge of their property when they marry, or a male arrives at the age of nineteen, and female at the age of eighteen."

Contestees Close.

63 Mr. Melton:

We desire to place in evidence the original papers in the case of Dave Hill vs. J. W. Blassingame, being Case No. 741, filed on November 25, 1902, in the United States Court for the Southern District of the Indian Territory at Chickasha, October Term, 1903, and ask that the same be marked "Exhibit I."

Contestees object for the reason that the same is improper at this time, and for the further reason that any suit pending in the United States Court has no bearing on this suit.

*James H. Tuttle (Recalled).*

JAMES H. TUTTLE, a witness for the Contestants, being recalled, testified as follows:

By Mr. Bond:

Q. Mr. Tuttle, did you have a conversation with Mr. Blassingame in the City of Chickasha in front of the Palace Drug Store, about the 14th or 15th of February, 1899, in regard to this land in controversy?

A. I have had a conversation with Mr. Blassingame no time.

Q. If Mr. Blassingame stated in his testimony that he had a conversation with you at that place and at that time in regard to this land, that is not true, then, is it?

A. No sir, it is not true.

Q. Mr. Tuttle, what proportion of the Campbell estate, that is the lands, did you turn over to the different heirs as they reached the age of majority; and what have you done with the residue, if any?

A. I have turned over about their proportion of the land and cut it off for them as they came of age. I still hold the residue of it.

By the Commission:

Q. Did you ever set aside any portion of the land as the portion of Mrs. Minter?

164 A. I set aside 160 acres, and she set aside about 1,500 for herself.

Q. Then she set aside a certain proportion for herself?

A. Yes sir.

Q. Did you ever confirm that selection?

A. No sir.

Q. Did the probate court ever confirm it?

A. No sir.

By Mr. Bond:

Q. Did Mrs. Minter take in allotment the land on which the home is situated?

A. She taken in that allotment and two allotments east of there.

Q. For whom did she take those two allotments east of there?

A. She taken it for the little girl by Dr. Minter and one for Dr. Minter.

Q. Did you consent that she should take a part for Dr. Minter?

A. I did not.

Contestees object as incompetent, irrelevant and immaterial.

Q. How much was the house located on her allotment valued at?

A. About \$4,000.

By Mr. Bailey:

Q. How much land have you assigned to Mont Campbell?

- A. I have assigned Mont Campbell about 320 acres.
- Q. How much land have you assigned to Holmes Campbell?
- A. I think he got 246 acres, with 160 over on the other side. I cut that place in two as they drew it and just let them allot the lands as they drew, and I am taking care of the children's part of it myself.
- Q. How much have you assigned to L. A. Campbell?
- A. He got about 320 acres.
- Q. How much have you assigned to Rex Campbell?
- A. Rex got something like 200 acres.
- Q. Is he a minor, unmarried?
- A. Yes sir.
- Q. How much have you assigned to John Campbell?
- A. John Campbell got a little over 200 acres.
- Q. Is he single?
- A. Yes sir.
- Q. How much have you assigned to Mrs. Campbell?
- A. I haven't assigned her anything, she assigned it to herself.
- Q. How much did she assign to herself?
- A. She assigned herself the Blassingame land and three allotments for herself.
- Q. Is Mont Campbell married?
- A. O yes.
- Q. Has he any children?
- A. Two.
- Q. How old is the oldest one?
- A. Somewhere about three years.
- Q. How old is the youngest one?
- A. About a year old.
- Q. Is Holmes Campbell married?
- A. No sir.
- Q. Is L. A. Campbell married?
- A. Yes sir.
- Q. And Rex and John are single?
- A. Yes sir.
- Q. As I understand these divisions you have made, they are your assignments as those heirs would come of age?
- A. Yes sir.
- Q. None of them have been confirmed or ordered by the court?
- A. No sir.
- Q. None of them brought to the attention of any court?
- A. Yes sir, when I got ready to settle with them they told me I was acting for the Campbell estate.
- Q. Have you ever had a final settlement?
- A. No sir.
- Q. You are holding the remainder of the land for the estate?
- A. When those boys file I expect to settle it.
- Q. At this time you are holding it for the estate?
- A. Yes sir.

By Mr. Bond:

Q. You allowed Mrs. Minter, though, to sell something like 1200 acres north of the road?

A. I gave my consent to that; yes sir, I did.

Q. But you did not give your consent for her to sell the land in controversy?

A. No sir, she never spoke to me about it.

Q. Nor for her to take in allotment the land she allotted for herself, or that for her husband or his child?

A. No sir.

By Mr. Bailey:

Q. You are certain that in front of the Palace Drug Store, in the town of Chickasha, during the month of February after Mr. Blassingame had purchased this land from Mrs. Campbell, you never had any conversation with him?

A. Just as certain as the sun shines.

*George Ladd (Recalled).*

GEORGE LADD, a witness for the Contestants, being recalled, testified as follows:

By Mr. Bond:

Q. Mr. Ladd, you testified in your direct examination that a short time after Mr. Blassingame went into possession of this land in controversy, you went to him, acting as Mr. Tuttle's foreman and demanded that he quit the possession of the same. Is that true?

A. Yes sir.

167 Q. If Mr. Blassingame testified in his examination that you never notified him to quit the possession of that land, is that testimony untrue?

A. It is.

Q. If Mr. Blassingame testified that you wanted to swap him certain tracts of land, including some of this land in controversy, is that true?

A. No, I never offered to swap him any land, anything of the kind.

Q. Are you acquainted with the reputation of Mr. Blassingame in the community in which he lives for truth and veracity?

A. Yes.

Q. Is it good or bad?

A. It is not good.

By Mr. Bailey:

Q. You and Mr. Blassingame are not very friendly, are you?

A. Why, no not since he burned the grass there and they found a true bill against him.

Q. You appeared as a prosecuting witness against him for that?

A. Yes.

Q. You appeared before the Grand Jury in a perjury charge?

A. Yes sir.

Q. You all had some trouble about your tenants; he charged you with interfering with them, didn't he?

A. No, had the trouble about this land.

Q. You are not very friendly?

A. No, he wanted to come on the west side of the creek, he wanted to set up a fence, and I would not let him come over there.

Q. Who gave you this notice that you served on Mr. Blassingame?

A. Mr. Tuttle.

Q. In writing?

A. No, sir.

168 Q. You just went over there and told him to get off?

A. Yes, sir.

Q. Did you tell him or his man?

A. I told him and some of his men.

Q. How long was that after he had been on that place?

A. Thirty or forty days, something like that.

Q. You just told him that Mr. Tuttle said for him to get off?

A. Yes, sir.

Q. Is it not a fact that Mr. Tuttle told you to tell Mr. Blassingame to get off that 80 acres below the creek?

A. No, sir, he was never on that.

Q. You are certain of that?

A. Yes, sir.

Q. Mr. Blassingame remained there for three or four years, did he not?

A. Yes, sir.

### *H. D. Cloud.*

H. D. CLOUD, a witness for the Contestants herein, having been duly sworn, testified as follows:

#### Direct examination.

By Mr. Bond:

Q. State your name.

A. H. D. Cloud.

Q. How old are you, Mr. Cloud?

A. Thirty-two.

Q. Where do you reside?

A. Chickasha.

Q. Are you a citizen of either the Choctaw or Chickasaw Nation?

A. Yes, sir, a citizen of the Choctaw Nation.

Q. How long have you lived in Chickasha, Mr. Cloud?

169 A. I have lived there, with the exception of about eight months, ever since the town started, I think it was in 1892 when it started.

Q. This is an action, Mr. Cloud, between the Hill and Reynolds heirs. Were you ever a witness in this case?

A. No, sir.

Q. What is your business here at this time?

A. Filing on the balance of the land.

Q. Are you acquainted with Mr. Blassingame?

A. Yes, sir.

Q. Do you know his reputation for veracity in the community in which he lives?

A. Yes, sir.

Q. Is it good or bad?

A. It is bad.

Q. Have you any interest in this suit?

A. None whatever.

Cross-examination.

By Mr. Bailey:

Q. Mr. Cloud, you and Mr. Blassingame are not very friendly, are you?

A. Well, we are on speaking terms; yes, I think we have kind of made friends.

Q. You went before the Grand Jury and had Mr. Blassingame indicted, did you not?

A. Yes, sir.

Q. You were a Government witness in that prosecution?

A. Yes, sir.

Q. You also brought suit against him, did you not?

A. Yes, sir, I brought suit before I had him indicted for perjury.

Q. You all have not been very friendly since then?

A. Not up till lately.

Q. You were not on speaking terms for quite a while?

A. No, we always spoke.

170 Q. You narrowly averted difficulties, didn't you?

A. No sir.

Q. Are you thoroughly friendly with him now?

A. I have dropped everything against him now.

Q. Your testimony in this case shows you are friendly with him now?

A. I have nothing whatever against Mr. Blassingame now.

C. E. Atkinson.

C. E. ATKINSON, a witness for the Contestants herein, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Bond:

Q. State your name to the Commission.

A. C. E. Atkinson.

Q. What is your age?

A. Thirty-two years old.

Q. Where do you reside?

A. Chickasha.

Q. Are you a citizen of the Chickasaw or Choctaw tribes?

A. Chickasaw.

Q. Are you acquainted with Mr. Blassingame?

A. Yes, sir.

Q. Are you acquainted with his reputation in the community in which he resides, for truth and veracity?

A. To some extent.

Q. Is it good or bad? Are you acquainted with his general reputation for truth and veracity?

A. Yes, sir, I believe I am.

Q. What is it, good or bad?

A. It is rather bad.

171 By Mr. Melton:

Q. You are not interested in this suit in any way are you?

A. No sir.

Q. You are not related to either of the parties in this suit?

A. No sir.

Q. You have no interest in the matter whatever?

A. No sir.

Q. You are not here as a witness in this suit?

A. No sir.

Cross-examination.

By Mr. Bailey:

Q. Have you any ill feeling towards Mr. Blassingame.

A. None in the world.

Q. Have you had any business relations with him?

A. None in the world.

Q. Is this opinion that you have expressed his general reputation, or your own personal opinion about the matter?

A. It is a matter of general reputation.

Q. I will ask you if you did not state to me the other day that you yourself would not believe Mr. Blassingame on oath?

A. I don't know whether I made that statement or not, in those words.

Q. Is it not a fact that what you have stated here is simply your own opinion in the matter, and not indicative of Mr. Blassingame's general reputation?

A. I think it is his general reputation more than it is my opinion.

Counsel for the Contestants calls the attention of the Commission to the original applications made by the various parties herein for selection of allotments.

Counsel for Contestees requested that plats of the land as rendered by the Government surveyors be filed as exhibits herein.



171½

Map.

(Plat of part of plat of U. S. Government Survey of Twp. 7 N., R. 6 W., I. M.)

172 It is hereupon agreed between counsel for Contestants and Contestees, with the consent of the Commission, that the testimony of Mrs. S. L. Minter shall be taken before a Notary Public, and agreed to as the testimony that she would have given at this hearing had she been present, and shall be considered in this case by the Commission.

The attorneys for the contestants are allowed twenty days after the service of the testimony in this case upon them in which to file a brief, and the attorneys for Contestees are allowed ten days in which to file their reply.

*Testimony of Mrs. Sallie L. Minter.*

Mrs. SALLIE L. MINTER, being first duly sworn testified as follows:

Direct examination.

By Mr. Bond:

Q. State your name, age and post office?

A. Sallie L. Minter, age 51 years, post office Chickasha, I. T.

Q. Are you a member of either the Chickasaw or Choctaw tribes of Indians?

A. I am a member of the Chickasaws by blood—

Q. Are you the widow of C. L. Campbell, deceased?

A. Yes sir.

Q. What year did he die?

A. He died in the year 1896.

Q. Did he leave a will?

A. Yes sir.

Q. Did you accept the terms of that will?

A. Yes sir.

Objected to by Mr. Bailey as irrelevant, immaterial and incompetent.

173 Q. Was Mr. J. H. Tuttle guardian under this will?

A. Yes sir.

Q. Did Mr. Tuttle authorize you to, or give his consent to your selling a certain piece of land, about six hundred acres south of the Purcell and Chickasha road?

Objected to by Mr. Bailey as immaterial.

A. No sir.

## Cross-examination.

By Mr. Bailey:

Q. Mrs. Minter you say that you are the widow of C. L. Campbell, who died in 1896?

A. Yes sir.

Q. What year was it when you sold this land to Mr. Blassingame?

A. It was five years ago last winter.

Q. That was about the year 1898 or 1899?

A. It was about five years ago.

Q. Do you remember what consideration Mr. Blassingame paid you for the land?

A. Yes sir, he paid me Two Hundred and Fifty Dollars.

Q. That was the land lying south of the Chickasha and Purcell road?

A. I do not know anything about it.

Q. Mrs. Minter, you are familiar with the land now in the possession of Mr. Reynolds?

A. Yes sir.

Q. Mr. Blassingame went into the possession of that land immediately after you made the trade with him?

A. Yes sir.

Q. Did he remain in possession of that land all of the time until he sold it to Mr. Reynolds?

A. I do not know.

Q. You never had any interest or claim to it?

174 A. I had a child's interest.

Q. Mr. Reynolds is now in possession of this land is he not?

A. I do not know who has possession of it, Mr. Reynolds told me he had possession of it.

Q. After you sold that place to Mr. Blassingame did you ever have any conversation with Mr. Tuttle in regard to selling it?

A. I think I did.

Q. You were holding the land at that time?

A. Yes sir.

Q. Who was in control of the land that you sold to Mr. Blassingame at the time you sold it to him?

A. We held the land together, the estate held it.

Q. Who had that land rented that year?

A. I do not know.

Q. Do you remember Mr. Dick Sherwood?

A. Yes sir.

Q. Was Dick Sherwood on the place?

A. Yes sir, he was working on the place.

Q. Mr. Sherwood was working that land was he not?

A. He never did work any land.

Q. Did he lease from you?

A. Yes sir. No, I leased the land to a man named Coleman in Vernon, Texas, and he subleased it to Sherwood.

Q. You say you rented it to Mr. Coleman?

- A. Yes sir, I rented my horse pasture.  
Q. Did that include this land over there?  
A. It included all on this side of the creek.  
Q. You had rented all of the land on this side of the creek to Mr. Coleman and he subrented it to Mr. Sherwood?  
A. Yes sir.  
Q. You say, Mrs. Minter, that you had rented this land to Mr. Coleman, were you in control of this land at this time?  
175 A. There was no land specified when I rented to Mr. Coleman, there had been no land specified in the contract, Mr. Tuttle was in control of all the land.  
Q. You made a trade with Mr. Coleman, did you?  
A. Yes sir.  
Q. Who received the rents from that land that year?  
A. There was no rents.  
Q. Did he make any crop that year?  
A. No sir.  
Q. Who got Mr. Sherwood to leave here?  
A. I did, I bought him out, and paid him \$400.00.  
Q. He surrendered your lease to you?  
A. Yes sir.  
Q. How many children have you, Mrs. Minter?  
A. Seven.  
Q. Where is the oldest one living?  
A. She is in the asylum at Norman, O. T.  
Q. Where is the next one living, and what is her name?  
A. Mrs. Carrie M. Tuttle, she lives at Minco.  
Q. Where is the next one living?  
A. Monte, he is living here on the old estate.  
Q. What is the name of the next, and where is he living?  
A. Holmes is the next, he lives at Minco.  
Q. Do you know whether he ever disposed of any land, a part of the old Campbell place?  
A. Yes sir.  
Q. Do you know whom he sold it to?  
A. To Hill and Bailey.  
Q. Do you know how much he sold?  
A. I do not know.  
Q. What is the name of the next child?  
A. Lawrence C., he is 19 years old.  
Q. Where is he living?  
A. Minco.  
176 Q. Has he an allotment there?  
A. Yes sir.  
Q. Has he disposed of any lands here?  
A. Yes sir.  
Q. Who did he sell to?  
A. He sold to Dave Hill.  
Q. Who is the next child?  
A. John, he is 19 years old.  
Q. Where is he living?

A. He is living here with me, he has a farm down here.

Q. Here on the old place?

A. Yes sir.

Q. Who is the next child?

A. Rex is the next child, he is 17 years old.

Q. He is living here with you?

A. Yes sir.

Q. Has he a farm also?

A. Yes.

Q. This is all of your children?

A. Yes.

Q. Has all of the Campbell children had their allotments?

A. They have all had their allotments on the old home place.

Q. Some of the children have disposed of their allotments?

A. Yes sir.

Q. Do you know how many acres of land Mr. Campbell was holding at the time of his death?

A. There was several thousand acres, about fifteen hundred acres in cultivation.

Q. You have sold off a part of it and there is quite a considerable amount of land left is there not?

A. Yes sir.

Q. Was Mr. Campbell an intermarried citizen or a citizen by blood?

A. He was an intermarried man.

177 Q. He got his right through his marriage?

A. Yes sir.

Q. Now when you had this conversation with Mr. Tuttle in regard to the sale of the North Horse Pasture, was anything said about the sale of any other land?

A. No sir.

Q. After you had sold this land to Blassingame, did you ever say anything to Mr. Tuttle about it?

A. I do not remember, I guess we must have talked about it, I did not know how much land I had sold.

Q. You remembered the deed that was signed was read to you?

A. I do not know, I thought the lines run north, I do not know anything about the land.

Q. I believe you stated that the consideration had been paid?

A. Yes sir.

Q. So far as you know no efforts have been made to recover this land contested by Mr. Hill?

A. No sir.

Q. You do not want this land for your allotment, do you?

A. No sir, I have done taken my allotment.

Q. So far as you are advised your children do not want it for their allotments, do they?

A. I do not know.

Q. They all have land now?

A. That is what they say. Mont has never filed for himself or his children.

Q. How long after you had sold this land to Mr. Blassingame before you got Mr. Sherwood to release his lease to you?

A. It was not very long, I never considered that at all when I was buying Sherwood out, I was buying him out to get him off of the place, he had possession of a part of the place and I wanted it.

Q. You say there were no rents that year?

178 A. Yes sir, there were no rents.

Q. Who got the rents off of this eighty or sixty-five acres for the years 1896-97?

A. There was no rents at all, it was included in the Campbell estate rents and divided out.

Q. Has there ever been any settlement of that estate, Mrs. Minter, has there been any final settlement?

A. No sir.

Q. What were you to get under the terms of the will?

A. I was to get a child's part.

Q. Was there no separate assignment made of that estate?

A. No sir.

Q. Do you know whether there was any specified assignment made to the children?

A. I do not.

Q. So far as you know the estate is to be divided out equally among you and the children?

A. Yes sir.

Q. The land was turned over to you and you proceeded to manage it—

A. No sir, he did not turn it over to me.

Q. You made a lease with Mr. Coleman?

A. No sir, there was no cultivated lands specified.

Q. The lease you made to Mr. Coleman included this sixty-five or eighty acres of land?

A. I do not know.

Q. Was there any objection ever made to your lease with Mr. Coleman by Mr. Tuttle?

A. No sir.

Redirect examination.

By Mr. Bond:

Q. All the lands that you held were the Campbell estate lands?

A. Yes sir.

179 Q. Mr. Tuttle controlled all the lands of the Campbell estate, did he not?

A. Yes sir, he did all the renting and selling, made all of the leases and kept the proceeds.

Q. You stated, I believe, that Mr. Tuttle gave you permission to sell the north pasture?

A. Yes sir.

Q. You sold that to Blassingame, did you?

A. Yes sir.

Q. Do you know how many acres was in that pasture?

A. No sir, I do not.

Q. How much did Blassingame give you for that land?

A. He gave me \$250.00.

Q. This was the only land belonging to the Campbell estate that Mr. Tuttle gave you permission to sell?

A. Yes sir, I told him I was going to sell the north pasture and he said sell it.

Q. When this deed was signed by you, you did not know anything about the description of the land, do you?

Objected to by Mr. Bailey.

A. No, I did not.

Q. Did they explain to you at the time the deed was read the part of the land that you were selling?

Objected to by Mr. Bailey.

A. No sir.

Q. Were you on the land when you signed the deed?

A. No sir, I was in Chickasha.

Q. They did not show you the land at the time you signed the deed?

A. No sir, I did not go over the land at all.

Q. At the time you signed the deed you were under the impression that the land run north in place of east, were you not?

180 Objected to by Mr. Bailey, for the reason that the same is immaterial.

A. Yes sir, and I did not know the land run so far east.

Q. You stated that Blassingame looped up to you and told you that your fence would be cut and that you would be fined \$500.00.

A. He told me that in town.

Objected to by Mr. Bailey as immaterial and incompetent.

Q. It was not your intention to transfer all of this land in the deed?

Objected to by Mr. Bailey.

A. I do not know how much I did sell him, I do not know anything about it, I did not know how much I was selling.

By Mr. Bailey:

Q. How long have you been living here on this place?

A. We have been living here about ten years.

Q. How long had you been living here when you sold this land to Mr. Blassingame?

A. I suppose about five or six years.

Q. The location of your home place is immediately adjacent to the land you sold Mr. Blassingame?

A. Yes sir.

Q. I will ask you if it is not a fact that at the time you sold this

land to Mr. Blassingame, that it was the common opinion throughout the Country that a citizen could only hold sufficient land for his allotments and the allotments of his family, and that he would be fined if found with excessive holdings?

A. That was the opinion.

Q. At the time you sold this land, is it not a fact that Tuttle disposed of other land and fixed the value of the land at about what the improvements were worth on the land?

A. I do not know, Mr. Blassingame fixed the price for me.  
181 Q. Do you know how many acres there were in the horse

pasture when you sold it?

A. I do not know.

Q. I asked you if it is not a fact that it is a larger tract of land than the one you sold Mr. Blassingame?

A. I supposed it to be, but I did not know that it was, I sold him that little place there on the creek.

Q. At the time you sold this land to Mr. Blassingame, did you not consider that you signed a contract for the possession and that you were not entitled to this land as a part of your old home place?

A. Well since then I have found out that a person can hold some surplus land, and they have of course improved land and held it as their surplus.

By Mr. Bond:

Q. At the time you sold this land, Mr. Tuttle, as guardian of the Campbell estate was in possession of all of the land?

A. Yes, sir, he was in possession of all of the land, and that that I sold he was in possession of that.

By Mr. Bailey:

Q. You do not mean that he was cultivating it when Mr. Coleman was in possession of it.

A. There was no land in cultivation when I rented it to Mr. Coleman.

Q. Who was cultivating that eighty or sixty-five acres of land at the time you sold it?

A. It was cultivated by the Campbell estate.

Q. Whose stock was working that land?

A. The Campbell estate stock.

Q. Had there been a division of the stock at that time?

A. No sir.

Q. Have you, at any time suggested Mr. Blassingame,  
182 after you made this sale, that you had no right to sell that land and that you wanted it back?

A. No sir, I never said anything about it, I told him two or three times that he had cheated me out of it.

By Mr. Bond:

Q. Do you know whether Mr. Tuttle, guardian of the Campbell estate or your husband, Mr. Minter, took any steps towards recovering this land from Mr. Blassingame

A. I do not.



INDIAN TERRITORY,  
Southern District:

Add Melton, a Notary Public, within and for the Southern District of the Indian Territory, do hereby certify that the above and foregoing testimony is a true and correct copy of the testimony of Mrs. Sallie L. Minter, taken before me in the consolidated contest case of Hill vs. Reynolds, both contestant and Contestee being present by attorneys at the taking of such testimony.

(Signed)

ADD MELTON,

[SEAL.]

Notary Public.

183

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, Nov. 25, 1912.

I. F. H. Abbott, acting Commissioner of Indian affairs do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.]

F. H. ABBOTT,

Acting Commissioner.

184

L. L. B.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, February 6, 1907.

I. T. D. 4246-1906.

Commissioner of Indian Affairs.

SIR: March 12, 1906 (Land 20618), your office transmitted the record, together with the appeal, in Chickasaw allotment No. 236, entitled J. B. Hill, a minor, by his mother and natural guardian, Nellie B. Hill, Contestant, vs. Frank Reynolds, a minor, by his Father and natural guardian, Chas. C. Reynolds, contestee, involving the N./2 of the S. E./4 of the N. E./4, the S./2 of the S. E./4 of the N. E./4, and the S. W./4 of the N. E./4 of section 32 T. 7, N. R. 6 W. containing 80 acres, with which is consolidated Chickasaw Allotment contest No. 237, entitled J. B. Hill, a Minor, by his mother and natural Guardian, Nellie B. Hill, Contestant vs. Willie Reynolds, contestee involving the N./2 of the N. E./4 of section 32, T. 7, N. R. 6 W., containing 80 acres; Chickasaw Allotment contest No. 238, entitled Harry F. Hill, a minor, by his mother and natural guardian, Nellie B. Hill, contestant, vs. Frank Reynolds, a minor, by his father and natural guardian, Chas. C. Reynolds, contestee, involving the N./2 of the S. E./4 of section 32, T. 7, N. R. 6 W., containing 80 acres, Chickasaw Allotment contest No. 239, entitled Lewis James, a minor, by his legal guardian, Dave Hill, contestant, vs. Sheldon Reynolds, a minor, by his father and natural guardian, Chas. C. Reynolds, contestee, involving the W./2 of the S. W./4

of section 33, T. 7, N. R. 6 W., containing 80 acres, and Chickasaw allotment contest No. 240, entitled Lewis James, by his legal guardian, Dave Hill, contestant, vs. Ethel A. Reynolds a minor, by her father and natural guardian, Chas. C. Reynolds, contestee, 185 involving the N./2 of the N. E./4 of the N. W./4 and the W./2 of the N. W./4 of section 33, T. 7, N. R. 6 W., containing 100 acres.

December 11, 1905, your office rendered a decision affirming the decision of the Commission to the Five Civilized Tribes of January 3, 1905, in favor of the contestants.

The Department has examined the record and concurs in your conclusion. Your decision is accordingly affirmed.

The papers are returned for appropriate disposition.

Respectfully,

THOS. RYAN,  
First Acting Secretary.

12 Enclosures.

186

F. R.

J. R. W.  
J. R. W.  
S. V. P.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, August 21, 1907.

*Chickasaw Contests' Review.*

1423-1907.

J. B. Hill v. Frank Reynolds No. 236.  
J. B. Hill v. Willie Reynolds " 237.  
Harry Hill v. Frank Reynolds " 238.  
Louis James v. Sheldon Reynolds 239.  
Louis James v. Ethel A. Reynolds 240.

The Commissioner of Indian Affairs.

SIR: Contestees filed motion for review of Departmental Decision of February 6, 1907, in favor of contestants in Chickasaw contests:

No. 236, J. B. Hill v. Frank Reynolds for S.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$ .

No. 237, F. B. Hill v. Willie Reynolds for N.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$ .

No. 238, Harry F. Hill v. Frank Reynolds for N.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$ ; Sec. 32.

N. 239, Louis James v. Sheldon Reynolds, for W.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$ ;

No. 240, Lewis James v. Ethel A. Reynolds for N.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$  of N. W./4 and W.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$  Sec. 33 all in T. 7, N. R. 6 W. I. M. in all 640 acres. Briefs have been served and filed by counsel for all parties.

The department made no independent finding of facts but examining the record affirmed your decision of December 11, 1906, adopting the finding of facts and conclusions of law in your decision. This is assigned as error but had no merits. It does not tend to despatch business, preserve rights of parties or serve any

useful purpose to restate facts of legal principles applicable thereto, already correctly stated in the record. If examination on appeal shows that all material facts are correctly stated the appellate tribunal may adopt them and does so by affirmance. They become the findings.

187 The general facts material, briefly stated, are that the lands involved are part of a tract of about 12000 acres, held by C. L. Campbell, intermarried white, who died in 1896, bequeathing his properties in equal shares to his widow and five minor children. This land January 21, 1899 was within a fence enclosing a larger tract for pasture. No part of the fence is shown to have been on these tracts, or yet on the larger one hereinafter mentioned, deeded by the widow to Blassingame. At that time the estate was yet in probate, but the debts were paid and the property had been turned over by the administrator to the guardians.

At the time the residence and about 160 acres of land has been set aside to the widow by the Guardian, who testified that in addition to such disposal by him the widow, has set aside about 1,500 acres for herself without action by him or the court or his assent other than implied by acquiescence. She was at that time in sole possession and control of it, without interference or objection by him or the court, of this 1,500 acres the widow that day by quit claim deed conveyed to J. W. Blassingame, all her right title and interest in two parcels, one, not including the land herein involved, for \$250, the other, for cattle, later commuted to \$270, cash, being "one section to be taken out of the North-west corner of the tract of land beginning at the east bank of West Bitter Creek about one hundred yards south of the Chickasaw and Purcell road, thence south and east one mile square. The deed stated the interest conveyed in sumply that of possession. This tract included these lands. It was unimproved except a 10 or 12 acre field at the northwest corner, involved in contest 237, a 60 to 75 acre field further south, on the east side not definitely located, apparently south from the east tract of contest 340, not herein involved and another plowed

188 field of about then acres in Contest 239 substantially the S. W./4 of S. W./4 of S. W./4 Sec. 33, there were no buildings or permanent structures and large part of the land was swamp, covered at times by water.

February, 1899, Blassingame went into possession and before December 1902, constructed three houses, two barns, two graneries, holding 8,000 bushels, made three wells drained the swamp and brought substantially all the land to cultivation at a cost of about \$2500. At or, soon after the purchase he knew the land was part of the C. L. Campbell holding, for he negotiated purchase from the widow, who sent Frank Plato, foreman con curator for the guardian to show the land. Plato went with her to make the deed and Blassingame testified that in February, 1899, he talked with the guardian as to what land he purchased and claimed. This is denied by the guardian but the testimony is good to show that he knew the land was part of the Campbell holding. The guardian claims soon after the sale to have notified Blassingame orally that the land belonged to the Campbell estate, and that he could not get it by purchase

from the widow. This Blassingame denies and this is about the only doubtful point in the evidence when scrutinized. No legal step was taken to question the rightful possession until about January 1902, when written notice to quit is said to have been served on him.

November 24, and December 24, 1902, the guardian, widow and heirs of full age by quit claim conveyed the lands to Dave Hill under whom contestants claim preference right to allot them by ownership of the Campbell improvements November 25, 1902, Hill brought suit of ejectment which has never been brought to trial.

December 10, 1902, Blassingame to his own use conveyed the improvement, and possessory right to J. W. Brimmage and March 6, 1906 Brimage assigned his claim to C. A. Reynolds on a sale made by Blassingame. Contestees, Reynolds children, obtained allotment of the lands as first applicants therefor. The question presented is whether the lands were so improved as to confer on C. L. Campbell's heirs preference right by sale of the improvements to control their allotment.

The act of July 1, 1902 (32 Stat., 641, 642-4) gave holders of improved lands the right to select allotments to include their improvements and to excess holders of improved lands, right within ninety days after its ratification made, September 25, 1902—to dispose of their improvements conferring on the purchaser right if made before selection by others.

An improvement is defined, Webster Dic. loc. ver. That which improves anything or is added to it by way of improving it; that by which the value of a thing is increased, its excellence enhanced and the like. Valuable additions or meliorations as buildings, clearings, drains, fences &c. on a farm.

When Blassingame purchased possession from Mrs. Campbell there was nothing of that kind, so far as the evidence discloses, on the land itself except the small fields in the northwest corner of land in Contest 237, and a south end of land in Contest 239, the rest was unimproved land, enclosed with a ring fence, swamp, indrained or scrub growth, mostly elm, in their natural state. There was no improvement save as above excepted, unless the ring fence on other lands surrounding the— can be regarded as such. No doubt when several trees comprising for illustration, a square mile of land are included in a general scheme of improvements and utilization, as by a house on one ten acre tract, a barn on another, corrals &c., on others, all included in a ring fence around all on the exterior of section line, all of the 64 ten acre tracts may be regarded as  
190 notionally improved by the improvement of the whole tract of which they are severally component parts. But such condition did not exist here. There is shown no general scheme of improvement of which these lands were part.

The object of the provision of the act of 1902 supra, no doubt was to save to the progressive and provident members of the tribe the result of their labor and property expended in improvement of the communal estate. It was not its object to effectuate attempts of greedy members of the nation to exploit the communal estate.

of their personal profit where no expenditure of labor or money had been made to improve the communal estate. No such purpose can be found in the act. It necessarily follows that lands unimproved in fact not essential parts of a general expenditure for enhancement in value, melioration and utility, are not within the meaning of the law improved lands though included in a ring fence which excluded others from access to them. The ring fence, in such case may be regarded as an improvement of the lands on which it stands, but cannot be regarded as in any sense an improvement of the lands on which it does not stand, and to which separately or as part of a proper farm or home unit it has no relation and adds no value.

In administration of the allotment acts, it is necessary to consider the Indian law and the nature of the Indian land tenures upon which the legislation of Congress impinges, and with which it interferes to effectuate the over-riding policy of ownership in sever-

191 alty.

The Indian land tenure was communal. Everyone had equal right and equal title to every part but possession exclusive of all others was allowed to those who appropriated and improved particular tracts. The Chickasaw act of October 28, 1889 (Chickasaw constitution, Treaties, and Laws, Ed. 1899, p. 243) prohibited any citizen to "fence or cause to be fenced in any manner any of the public domain for pasturage." It was made a misdemeanor punishable by fine of not less than \$200 and payment of all expense or removing and destroying the fence. But the act of October 11, 1892 (ib. p. 292), required the citizen to fence in "his field or farm" to be hog proof for protection of his crops and cultivated land; these acts, in substance, made the public domain common pasture authorizing individual appropriation only of cultivated lands and at most only such uncultivated lands as were reasonable appurtenant to maintain and restrain from vagrant wandering the domestic animals necessary to household economies and farm culture.

What constituted or limited the area of a farm is not defined, but clearly a wide area of general pasture for herds would not be included for that was in *therms* prohibited. For what was deemed in 1866 a proper individual appropriation of the public domain of this nation, reference may be made to Article XV of the treaty of April 28, 1866 (14 Sta., 769, 775), giving to each citizen of both sexes and every age a prior right to the quarter section in which his or her improvement lies. The Chickasaw act of September 24, 1887, (Chic. C. T. & L. Ed. 1899 p. 199), defined how public domain might be appropriated and become a "lawful claim." There must be a habitable house of logs, plank or boards, at least twelve feet square and every six months after the first twelve months an acre must be prepared for cultivation under good and lawful fence until twenty acres have been taken in. Parents and guardians could take

192 claims for their children and wards by compliance with the law, and registry in the county clerk's office. No person could have more than one claim and two years' abandonment terminated the right leaving the land open to any other citizen.

The act of Congress, as far as inconsistent no doubt, over-rode any Chickasaw law theretofore existing and extended what before may have been an excess holding to include the full area of 320 acres—a full allotment right. It also gives right to sell improvements on excess holdings but it does not give to lands unimproved in fact the character of improved lands though enclosed in an unlawful ring fence. Such fence improves no lands but those on which it is built and for separate enclosure of which as part of an allotment, it is and can be made useful, has value and adds to their value. As to those unimproved lands Campbell himself had been alone could have asserted no right of disposal by reason of improvements when no improvements existed. His estate had not property in or to them and his children none.

Similarly as to the two fields on land involved in Contest- 237 and 239. The widow was in sole possession prior to January 21, 1800 when she conveyed and turned them over to Blassingame, and his possession continued to his sale to Reynolds, more than the two years fixed by the Chickasaw act of 1887 Supra. Whether these fields were originally brought into cultivation by Campbell of his widow, the evidence does not clearly show nor is that material. They were abandoned before Blassingame's sale of the improvements, mostly made by himself to Reynolds. Reynold's right was good and Hill took nothing by his deed—all the allotments are entitled to stand intact.

193 Departmental decision of February 6, 1907, is recalled and vacated and former decisions of the Commission to the Five Civilized Tribes and of your office are reversed and the contests are dismissed.

Very respectfully,

G. W. WOODRUFF,  
*Acting Secretary.*

194 Address only the Commissioner of Indian Affairs.  
Refer in reply to the following Land Allotments.  
41064—1911.  
J. D. C.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, May 11, 1911.

*Chickasaw Allotment Contest.*

Hill vs. Reynolds.

The Commissioner to the Five Civilized Tribes, Muskogee, Oklahoma.

SIR: Inclosed herewith is a copy of Departmental decision of May 8, 1911, in Chickasaw contest allotment No. 236 consolidated, entitled J. B. Hill vs. Frank Reynolds.

You are requested to serve a copy of this decision on the attorneys and interested parties in the State of Oklahoma, and acknowledge receipt of this copy, in as much as former correspondence shows



that some of the papers in this case which were forwarded to you were never received.

Respectfully,

C. F. HAUKE,  
*Second Assistant Commissioner.*

5-E. M. J.-10.

195

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, May 8, 1911.

*Consolidated Chickasaw Allotment Contests.*

J. B. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. HILL, Contestant,

v.

FRANK REYNOLDS, a Minor, by His Mother and Natural Guardian, Charles O. Reynolds, Contestee.

*Land in Controversy.*

N./2 S. E./4 N. E./4 S./2 S. E./4 N. E./4 and S. W./4 N. E./4  
Sec. 32 T. 7 N., R. 6 W. containing 80 acres.

No. 237.

J. B. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant.

v.

WILLIE REYNOLDS, Minor, by His Father and Natural Guardian, Charles O. Reynolds, Contestee.

*Land in Controversy.*

N./2 N. E./4 Sec. 32, T. 7 N., R. 6 W. Containing 80 acres.

No. 238.

HARRY F. HILL, a Minor, by His Mother and Natural Guardian, Nellie B. Hill, Contestant,

v.

FRANK REYNOLDS, a Minor, by His Father and Natural Guardian, Charles O. Reynolds, Contestee.

*Land in Controversy.*

N./2 S. E./4 Sec. 32, T. 7 N. R. 6 W. containing 80 acres.



LEWIS JAMES, a Minor, by His Legal Guardian, Dave Hill, Contestant,

vs.

SHELDON REYNOLDS, a Minor, by His Father and Natural Guardian, Charles O. Reynolds, Contestee.

Land in Controversy.

W./2 of S. W./4 Sec. 33 T. 7 N. R. 6 W. containing 80 acres.

No. 240.

LEWIS JAMES, by His Legal Guardian, Dave Hill, Contestant,

vs.

ETHEL A. REYNOLDS, a Minor, by Her Father and Natural Guardian, Charles O. Reynolds, Contestee.

Land in Controversy.

N/2 N. E/4 N. W./4 and W./2 N. W./4 Sec. 33, T. 7 N., R. 6 W. containing 100 acres.

On Review.

This is a contest instituted on behalf of J. B. Hill, Harry F. Hill and Lewis James, minor Choctaws whose degree of Indian Blood, respectively is  $1/32$ ,  $1/32$  and  $1/4$ , against Frank, Willie and Ethel Reynolds minor Chickasaws whose degree of Indian Blood is  $1/4$  to determine the right to select in allotment five tracts in the Chickasaw nation, described above, embracing 420 acres of land.

A decision was rendered by the First Assistant Secretary of the Interior February 6, 1907, in favor of the members of the Hill family. On review, this decision was recalled and vacated and prior decisions of the Commissioner of Indian Affairs and the commission to the Five Civilized Tribes were reversed by a decision rendered by the acting Secretary, August 21, 1907. While the matter was under review, tribal patents were inadvertently issued conveying the land in question to the Hill children. Subsequently a suit was instituted

in the proper United States Court to have these instruments set  
197 aside, and, after various proceedings, which need not be detailed, a consent decree was entered cancelling the patents, with the understanding by all concerned that the case should again be heard and decided upon its merits by the Department. The case was resubmitted at length by both parties, orally and by brief, and is now ready for final decision.

The contestants claim these lands by reason of priority of possession and ownership of improvements. Contrary to this, the contestees rely on priority of application in addition thereto, and claim

a better title to the improvements and a greater right to the possession of the land than their opponents.

The lands in question lie between the forks of East Bitter and West Bitter Creeks, and include the major portions of the East half of section 32, and the contiguous lands comprising part of the west half of section 33, all in township 7 North, range 6 west of the Indian Meridian. West Bitter Creek passes in southerly direction near the western limits of these tracts; East Bitter Creek flowing also to the south does not touch any of them being approximately one-half mile to the east. The Chickasaw-Purcell road runs in a general easterly and westerly direction near or through the northern part of the land.

These lands were once a part of a much larger tract known as the C. L. Campbell farm which embraced 12000 acres to 15000 acres in the Chickasaw nation and extended over a considerable portion of the adjacent and near-by sections. Campbell, a white man, having married a woman, of part Indian blood, occupied or claimed these lands for a number of years prior to his death which occurred in 1896. He used the major portion of the land for grazing but reduced some 1200 acres or 1500 acres to cultivation. The Campbell Home place

and the buildings were in the N. E. -/4 of said section 33, considerably east of the main body of the land in controversy.

North of the home place lay the extensive tract which is referred to in the records as the "North Pasture."

At the original hearing, (April 27, 1904,) the contestants offered in evidence a writing purporting to be a copy of the will of C. L. Campbell, and a copy of the minutes of the Chickasaw (Indian) court confirming the appointment of W. L. Sawyer, as administrator and J. H. Tuttle as guardian, certified to be true copies thereof — *the* Probate Clerk of Pontotoc County, Chickasaw Nation, under date of April 25, 1904. The contestes excepted because of (1) failure to show that the original of the will could not be furnished, and (2) lack of proper authentication of certification. This exception will be considered in a subsequent connection.

By this will Campbell disposed of his personal property and certain lands claimed by him to his wife and five minor children, share and share alike. Other property or "whatsoever kind (except household furniture and wearing apparel) "not here before mentioned, he bequeath- to his wife and children (including two adult daughters) in equal shares. Apparently the adults were to receive their shares wholly or in part, within one year after the testator's death and the minors' interests were to be held in trust by the guardian.

After the death of Campbell his widow and minor children continued to occupy the old Campbell home. In 1899 she again married a white man a Doctor Minter, with whom she continued to reside at the same place.

Upon allotment of tribal lands under the agreement of 1902, Mrs. Minter selected the lands including the Campbell home as her allotment. Nearby lands constituting a part of the Campbell holdings were selected as the allotments of Doctor Minter, and a daughter. Other Campbell lands were allotted to certain of

her children, while still other portions were disposed of and the proceeds used to provide allotments elsewhere for other members of the family.

January 21, 1899, Mrs. Campbell prior to her marriage to Doctor Minter, executed a quit claim deed or bill of sale conveying to one J. W. Blassingame her right, title and interest in and to the possession of two tracts of land (formerly held or claimed by her deceased husband), together with the improvements thereon. This transaction marks to origin of the claims of the Reynolds Children. Blassingame paid \$250 for the first of these tracts which is described in the bill of sale as the "Campbell North Horse pasture," which is north of the land in controversy and not a part of it, and also north of the Chickasaw-Purcell road. The second tract, which does embrace the lands involved in these contracts, with additional lands bordering it on the east lies south of said road and of West Bitter Creek, and is described in the instrument of conveyance as follows:

One section to be taken out of the northwest corner of her (Mrs. Campbell's) tract of land. Beginning on the East Bank of West Bitter Creek, about one hundred yards south of the Chickasaw-Purcell road, thence south one mile thence east one mile, thence north one mile, thence west one mile to place of beginning.

The consideration for the land so described was to be certain cattle, but the sum of \$270 was finally paid in lieu thereof.

Blassingame entered into possession of these tracts in February or March, 1899, and held the same until December 10, 1902, during which time he made valuable improvements thereon. On the date last named he executed a bill of sale conveying his interest in the land obtained from Mrs. Campbell, together with the improvements, to one J. W. Brimmage, for a consideration of \$1,500.

200 Brimmage assigned to C. A. Reynolds who desired the land for his — the contestees herein. He paid Blassingame \$500 in money and gave his note for \$1,000 which was paid later in full.

It is impossible to make a finding as to whether or not C. L. Campbell complied with the requirements of the intermarriage laws of the Chickasaw nation necessary to confer citizenship. Were he now an applicant for enrollment the case would necessarily be remanded for completion of the record.

September 7, 1897, a decision was rendered by the United States Court for the Central District of Indian Territory admitting James W. Blassingame and his four children to enrollment as citizens by blood, and his wife as a citizen by intermarriage of the Chickasaw nation. This decree was rendered under the act of June 10, 1896, (29 Stat. 321) which declared that the judgments of the United States Court in such cases should be final. This decision remained undisturbed until after Blassingame transferred to Brimmage — the Choctaw-Chickasaw citizenship court rendered a decree December 17, 1902, in the test case of J. T. Riddle, et al. setting aside and vacating the decisions of the United States Courts in all such cases. Thereupon Blassingame transferred his case to the

Citizenship Court for trial de novo with the result that, on February 29, 1904, he was denied enrollment by said Court. Brimmage and Reynolds are both intermarried whites, with Indian Children.

The next conveyance to be considered is the basis upon which rests the claims of the contestants. November 18, 1902, J. H. Tuttle, (as guardian of John and Rex Campbell, minors), Mrs. Minter, (formerly Mrs. Campbell), and her sons M. T. L. A. and Holmes Campbell, executed a bill of sale purporting to convey to Dave Hill, father of the Contestants, substantially the same premises as those described in the bill of sale, from Blassingame to Brimmage, i. e. the lands in controversy, with the improvements thereon, together with other lands lying east and north.

December 24, 1902, H. E. (Holmes) Campbell, adult son of Mrs. Campbell and J. H. Tuttle, joined in a bill of sale purporting to convey to the said Dave Hill the north half of the southwest quarter, and the north half of the southeast quarter (two eighty acre tracts) of said section 32, with the improvements thereon. The latter tract only is a part of the lands in controversy.

The consideration for the conveyance of November 18, 1902, was to be \$1,600, which remained unpaid at the time of the hearing, that for the conveyance of December 24, 1902, was to be \$750, all but \$225 of which has been paid. Neither conveyance was made under authority of, or confirmed by, any court.

Litigation resulted from the claims based upon the conveyances made by members of the Campbell family Tuttle stated that he did not himself give notice to Blassingame to quit possession but wrote to his foreman, George Ladd, "to tell him that — could not have the land." Ladd testified that in the spring of the year that Blassingame entered into possession he told Blassingame that Mr. Tuttle wanted him to get off the land.

Mr. R. Bond, attorney for contestants, testified that Mr. Tuttle can Doctor Minter came to the office of Holding and Bond (his firm) and requested them to bring suit; that they notified Blassingame and his son to quit possession; that Doctor Minter was to furnish the funds for the suit; but that the funds were not furnished and the suit was never instituted. Witness further stated that this occurred "to the best of my recollection," in 1899 or 1900.

202 J. W. Blassingame, Mrs. Campbell's first grantee, testified that he never received any notice from Ladd to quit possession; that three years after he acquired the place he received a written notice from Holding and Bond claiming the land; that no suit was instituted by them.

November 25, 1902, suit in ejectment was filed by Hill against Blassingame. This occurred one week after the bill of sale to Hill was executed by Tuttle and members of the Campbell family. Answer was made by Blassingame and by Reynolds on behalf of his children. Apparently nothing was done from 1902 until some time after the inadvertent issue of patents to the Hill family toward prosecution of his suit. Thereafter, plaintiffs obtained a judgment

on the ground that they were the owner- of the title to the land. Later the patents were cancelled as before noted.

Pertinent to the facts in this case are certain laws and treaty provisions which have been carefully considered but will not by reason of the space required, be set forth in full. They are: The Chickasaw Tribal acts of October 7, 12, 12 and 19, 1876 (Chickasaw Law Book 1899 pp. 57, 81, 73, 144) relating to respectively to the making of wills the descent of property, the duties and powers of guardians and the disposition of the estates of deceased Chickasaws; the act of Congress of May 2, 1890 (26 Stat. 1, 83, 94, 95), putting Mansfield's Digest of the Statutes of Arkansas, 1884, in force in the Indian Territory, generally except as to Indian citizens; the act of June 7, 1897 (30 stat., 83), making said statutes applicable to all persons therein, irrespective of race; Section 28 of the act of June 28, 1898, abolishing all tribal courts in Indian

203 Territory, and depriving the officers thereof of all authority in connection therewith; Section 29 of said act of June 28, 1898, and section 70 of the act of July 1, 1902 (32 Stat., 641), giving parents precedence over guardians in the selection of allotments for minor Indians; Article 1 of the treaty of 1865, providing that each Choctaw and Chickasaw should have an equal interest in the tribal lands; Article XV of the treaty of 1866, (14 Stat., 769) providing a tentative plan of allotting 160 acres to every citizen; the Chickasaw acts of September 24, 1887, October 11, 1892, and October 28, 1889 (Law book 1899 pp. 199, 200, 292, 243) relating respectively, to what constituted a valid claim to Chickasaw lands and the abandonment thereof, defining what should be a lawful fence and providing a penalty for fencing land for pasturage, and sections 17 and 18 of said act of June 28, 1898, and sections 19 and 20 of the act of July 1, 1902, supra relating to excessive holdings and providing penalties therefor.

Much of the Campbell farm was inclosed for pasturage purposes. The cultivated portion did not exceed 1,200 or 1,500 acres. The evidence fails to show that any improvements were added to the land either by Mrs. Campbell or by Tuttle, or by any of the Campbell children after the death of C. L. Campbell. The fields constituting the home place, and probably (prior to 1899) some of the lands now in controversy, were cultivated by her workmen or by tenants. Her testimony is in conflict with that of Tuttle as to who received the rents from the land last mentioned. She claims that he let out the lands and received the rents. He claims that he still expects to get the rents from her. It may be held however, with reasonable certainty that, during the period Blassingame was in possession, i. e. from January 1899 to December 1902, there was no serious effort to dispossess him.

Tuttle claims that when the minors became of age he assigned to each his share of the land comprising his father's estate 204 and that the widow was given independent control of various tracts. The most that can be inferred from his testimony is that lands lying somewhere north and east of West Bitter Creek were placed at the disposal of Mrs. Campbell and that other lands

south of that creek were held by him from the minor Campbells, but Mrs. Minter testified positively that no assignment was made to the heirs of the lands due each. It appears no act of Tuttle's by way of renting the lands or disposing of the interest of the heirs therein was ordered confirmed by any court, either of the Chickasaw nation or of the United States, and every indication points to the conclusion that during the time he was supposed to act as guardian matters were allowed to drift merely to take such course as best they might, without any special control by him pending the allotment of the land.

The witnesses gave their testimony more than five years after Mrs. Campbell conveyed to Blassingame and, as a result, their statements are in a degree indefinite and conflicting, but it appears that practically all of the land in controversy was at that time (January 21, 1899) uncultivated, used mainly if at all, for grazing purposes. Two fields of 12 or 15 acres each, and probably one of 35 acres has been reduced to a state of cultivation, but seemingly not separately fenced. A fourth field of 60 to 75 acres was mentioned as being located within a pasture fenced to itself with a four wire fence "broke up" but not under cultivation. None of these fields, particularly the last, can be definitely placed with respect to the lands embraced in any one of these contests. It further appears that there was an extreme outside fence around said pasture which probably conformed substantially to the square mile described in Mrs. Campbell's bill of sale to Blassingame also that there was another fence running along a creek, not named. Neither the condition or the exact loca-

tion of these fences can be fixed by the evidence but it may be inferred that the extreme outside fence passed diagonally through the western edge and perhaps skirted the northern border of the lands which are the tracts now covered by the several contests, without conforming to the government survey passing finally beyond and to the east of all or nearly all of said lands. The fields referred to above were detached tracts forming no part of a continuous scheme for improvement.

Tuttle's exercise of dominion or control of the lands in controversy seems to have been limited, after Blassingame entered into possession, to these fields, and even so to them it does not appear that he did more than to request his attorneys to have the rents sued for in the suit which was contemplated in 1899, but never instituted.

During the period these lands were held by Blassingame valuable improvements were made upon them consisting of buildings, fences, wells, and cultivation, including the drainage of a considerable acreage. Blassingame estimated the value of these improvements to be \$2500. As the contestants, in their contest affidavits, swear to the existence of such improvements well distributed over the several tracts and as Hill admitted that the land was practically all in cultivation when Tuttle and Mrs. Campbell conveyed to him in 1902, this phase of the matter need not be discussed in detail.

Viewing this controversy first from the standpoint of the several conveyances referred to above, what conclusion follows as to the right of the claimants by reason thereof? The bill of sale of January 21,



1899, to Blasingame was executed by Mrs. Campbell only. Assuming that her interest in the tracts conveyed was derived from C. L. Campbell, either by will or by inheritance, and that said lands properly and lawfully constituted a part of his descendible estate,

206 it would have been necessary to a complete conveyance of the right of possession of the other members of the Campbell family to join with her in the bill of sale, unless there was an assignment of these particular lands to her as a part of the estate. But she testified there was no assignment of individual interests.

Even if it should be held that where a family of Indian citizens in occupation of tribal lands is deprived by death of the father, particularly if he was a noncitizen white man, the right of possession passes to the surviving mother, with sole power of disposition without recognition of any separate right in the children still there would be grave doubt as to whether Mrs. Campbell has such an interest in this land in 1899, more than two years after her husband's death as would entitled her to convey. This because of lack of affirmative showing of compliance, *with*er by herself or her husband with the tribal laws referred to above relating to the taking of lawful claims on the public domain, the abandonment thereof, the construction and maintenance of fences, and the fencing of lands for pasturage purposes only.

Mrs. Campbell (as Mrs. Minter) was also one of the grantors who joined in the conveyance of November 18, 1902, to Hill, but her act must be regarded as nugatory for she had already transferred her right to the same land to Blasingame *for*a valuable consideration. J. H. Tuttle, claiming to act for the minors, John and Rex Campbell, also signed the bill of sale. But his act was not authorized by any court. Even under the Chickasaw law, it would have been necessary, had the Indian Probate Court been empowered to act, to secure the consent of the Court (See Section 8 Chickasaw act of October 12, 1876, *supra*.), but the power of the tribal judges to act was absolutely taken away by section 28 of the Act of Congress of June 28, 1898, also referred to above, which abolished the tribal courts and provided that no officer of such courts should  
207 "thereafter have any authority to do whatever or perform any act theretofore authorized by any law in connection with said courts."

If Tuttle had proceeded under the laws of Arkansas as published in Mansfield's Digest, 1884, it would have been necessary for him to comply with the various provisions therein, relative to the duties of guardians, but there is no evidence or even a claim that he did so. It follows that no force can be attached to the bill of sale in so far as it purports to convey the interests of said minors. Moreover it is necessary to hold in this connection that the copy of the alleged will of Campbell and of the minutes of the court showing the appointment of Tuttle were not properly admitted in evidence for the reason that the same were certified only by an officer of the Indian court. This conclusion is also based on section 28 of the act of June 28, 1898.

In the absence of proper evidence of a will, and proceeding upon



the theory that C. L. Campbell died intestate, it must also be held contrary to the terms of the alleged will, that the two adult daughters of C. L. Campbell succeeded upon his death to a child's share in his whole estate. This being true, it was necessary to pass good title assuming Campbell had a descendible interest in the extensive holdings claim by him, for them also to join in the conveyance of November 18, 1902, but they failed to do so. This defect in parities also applies to Mrs. Campbell- bill of sale to Blasingame.

There remains to be considered the bill of sale of December 10, 1902, from J. H. Tuttle and Holmes Campbell to Dave Hill, which affected the lands now in controversy as to the eighty acres covered by contest No. 238.

208 There is nothing in this instrument to show that Tuttle acted in a representative capacity, and it is subject generally to the objections to the bill of sale of November 18, 1902, already pointed out above.

The department is of opinion that the defects and irregularities in these bills of sale, executed by or on behalf of the members of the Campbell family, are so vital as to render extremely doubtful any claim of right or title based thereon, and that the controversy must therefore be determined upon more substantial — if a just and fair conclusion is to be reached.

Primarily the right of possession to Indian communal lands is based upon actual occupation, and where an Indian has acquired a special interest in a portion of the lands of his tribe, by such means and has materially enhanced the value of such land by placing improvements on the same or has invested his means in improvements placed thereon by others, it is the unwavering policy of the department to recognize and protect his equitable interest rather than to turn the land over to another having a mere nominal title thereto particularly where the person having the obvious right was first to apply for the land.

Applying this standard to the present situation what are the rights of the Hill family in these lands? There are three small tracts to which Hill asserts special claim of right, which may or may not be identical with fields referred to hereinbefore. Two of these (said to contain from 12 to 15 acres each) are a part of the land included in the bill of sale of November 18, 1902, from Tuttle and members of the Campbell family, neither of which is shown to have been forced as a separate inclosure. One of them is located by Hill in the southwest corner of the N. E.  $\frac{1}{4}$  of section 32, and is a part of the 80 acres embraced in contest No. 236; The other according to his testimony is in the southwest corner of the S. W.  $\frac{1}{4}$  of  
209 Section 33, and constitutes a part of the 80 acres covered by contest No. 239.

The possession which he claims, to have held of these two tracts, aggregating perhaps 25 acres was of a constructive nature only, acquired more than three years after the origin of Blasingame's claim thereto and based upon the right supposed to accrue by reason of the irregular and incomplete bill of sale last referred to above. There

can be no doubt of the correctness of this conclusion in view of Hill's admission that he had never put any improvements upon the place obtained through that bill of sale, or received any rents therefrom.

In view the shadowy claims of the Hill Children to these two tracts, it cannot be held that they have a paramount right to prevail in contests Nos. 236 and 239 particularly as each is only about one-sixth the area of the lands affected by said contests respectively.

The third tract to which Hill lays special claim said to contain 30 or 40 acres, is a part of the 80 acres in contest No. 238 being that portion of the same lying west of West Bitter Creek. He based his claim to this as well as to the whole of said 80 acres, upon the defective and imperfect bill of sale executed December 10, 1902, by J. H. Tuttle, and Holmes Campbell. Hill testified that he caused a fence to be placed around this 30 or 40 acres (the west part of the eighty) January 1, 1903, which was nearly four years after Blassingame acquired the same and subsequent to the latter's transfer to Brimmage. The character of this fence is not shown but, in view of the brief time within which it was erected it may well be questioned whether it had the element of strength and permanence necessary according to numerous decisions of the Department, to constitute a bona fide improvement. Six months after this fence

was constructed contestees made application for the lands in  
210 controversy.

In the opinion of the department, this small tract was an integral part of the lands long occupied and improved by Blassingame, as a compact farm unit, and that the right acquired by Reynolds by actual investment could not be swept aside by Hill's late and unwarranted assertion of right.

There was a fourth tract, vaguely referred to in the testimony, which, it is alleged, was fenced by itself and lay somewhere within the large pasture, but it is impossible to locate this field with respect to any particular contest.

As these small tracts are outlying portions of the old Campbell place, it seems to be necessary in this connection to repeat the ruling heretofore made by the Department that while remote tracts even if not highly cultivated or thoroughly subdued, may be treated as a part of the *fa rim* to which they are appurtenant, and, in a contest case, be disposed of an inseparable part of it, but that such outlying tracts cannot be held to be the nucleus of an independent allotment right. *Blakely v. Bishop*, decided May 31, 1907 (M. 602 A. A. G., 278).

Much of the seeming force of the arguments for contestants is dependent upon the impression conveyed that in some way the heirs of C. L. Campbell, particularly the minors will be deprived of their inheritance if the selections of the contestees are allowed to so stand. But there is no real force in this suggestion. The Campbell family for many years enjoyed the benefits of the vast areas of land claimed by C. L. Campbell, most of which was unquestionably held in disregard and defiance of the laws of the Chickasaw nation and the United States. If Campbell was holding 15,000 acres at the time of his death, the average amount then held for each member of the family, including the two adult daughters was more

than 1600 acres. It follows therefore that the part to which  
 211 the family probably had a substantial claim was absorbed  
 by their allotment selections which were principally made  
 either directly therefrom or from other lands acquired with the  
 proceeds obtained by sale of their interest in parts thereof. The  
 lands now in controversy are not needed for the allotment of any  
 member of the Campbell family.

Nor should it be overlooked that, save — the conveyance of Mrs.  
 Campbell in 1899 to Blasingame, it does not appear that any at-  
 tempt was made by Tuttle or members of the Cambell family, to  
 comply with that portion of the act of June 28, 1898, *supra*, making  
 excessive holdings illegal and providing a penalty therefor. From  
 and after the expiration of the nine months allowed Indian citizens  
 under that act to dispose of suc- holdings it was unlawful for them  
 to hold more than their approximate share of the tribal lands.  
 True the said act of July 1, 1902, did give an extension of ninety  
 days, beginning with September 25, 1902, to dispose of excessive  
 holdings, in order to protect owners of bona fide improvements, but  
 it was certainly not intended to permit Indian citizens to revive and  
 reassert claims, long dormant, after others had entered into posses-  
 sion of and highly improved the lands once claimed by them.

The fact that Blasingame was finally denied enrollment militates  
 in no way against the justice of contestees' claims. They invested  
 their means in improvements made by him and succeeded to his  
 possessions. Moreover, his right to occupy and improve Indian  
 lands was legally perfect as he and the members of his family had  
 the status of citizens of the Chickasaw Nation by a decree of the  
 United States Court rendered under an act of Congress which pro-  
 vided such decrees should be final.

212 In reviewing this case the Department has been particu-  
 larly impressed with the failure of the contestants to show  
 affirmatively a superior right to the land. The burden of establish-  
 ing such right was upon them, as plaintiffs, but they have failed  
 to make out a case in their behalf. Independently of such failure,  
 it is evidence that to disturb the allotment made to the Reynolds  
 children would not be right.

Therefore the Department adheres to its decisions of August 21,  
 1907, and the lands embraced in said contests numbered 236, 237,  
 238, 239 and 240 are hereby awarded, respectively, to Frank Rey-  
 nolds, Willie Reynolds, Frank Reynolds, Seldan Reynolds and Ethel  
 A. Reynolds, the contestees therein.

FRANK PIERCE,  
*First Assistant Secretary.*

Endorsed: "Exhibit 1." G. U. McKinney, Reporter.

213 And now at this time, to-wit: on the 12th day of March,  
 1912, came the defendant in the above entitled cause and  
 filed his *Præcipe* for Summons in said cause, which said *Præcipe*,  
 together with the endorsements thereon, is in words and figures as  
 follows, to-wit:

214 In the Sup. Court of the State of Oklahoma, Sitting Within  
and for the County of Grady.

399.

HARRY F. HILL, by His Next Friend, Dave Hill, Plaintiff,  
vs.  
FRANK REYNOLDS, Defendant.

To the Clerk of said Court:

Please issue summons in the above entitled cause, directed to the Sheriff of Grady County, Oklahoma, and command him to notify Frank Reynolds and C. A. Reynolds legal guardian of Frank Reynolds that he has been sued in the above entitled court, and must answer the petition filed therein by the plaintiff Harry F. Hill by his next friend Dave Hill on the 12th day of April A. D. 1912, or judgment will be taken against him for title to the N. 2 of S. E. 4 of Section 32 Township seven North, Range six west in Grady County, Oklahoma, and injunction and cancellation of patents and costs of suit and command the said sheriff to make return of said writ on the 22 day of March, 1912.

BOND & MELTON,  
*Attorneys for Plaintiff*

Endorsed: Filed M'ch 12, 1912. W. L. Melton, Clerk of Superior Court.

215 And thereupon, to-wit, on the 12th day of March, A. D. 1912, there was issued in said cause by the Clerk of said Court, a summons; which said summons, together with all endorsements thereon and the Return of the Sheriff on said Summons, is in words and figures as follows, to wit:

216 In the Superior Court of Grady County, Oklahoma.

The State of Oklahoma to the Sheriff of Grady County, Oklahoma,  
Greeting:

You are hereby commanded to notify Frank Reynolds and C. A. Reynolds Legal Guardian of Frank Reynolds that he has been sued by Harry F. Hill by his next friend Dave Hill in the Superior Court of Grady County, State of Oklahoma, and that unless he answer by the 12<sup>th</sup> day of April, A. D. 1912 the petition of the said Harry F. Hill by his next friend Dave Hill against Frank Reynolds for title to the North half of the southeast one fourth of Section Thirty-two Township Seven North Range Six West in Grady County, Oklahoma, and injunction and cancellation of Patents and costs filed in the office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 22<sup>nd</sup> day of March 1912.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chickasha, Grady County, Oklahoma, this 12<sup>th</sup> day of March, 1912.

W. L. MELTON, *Clerk.*

Endorsed: Suit brought for title to land injunction cancellation of patents and costs. If the defendant fail to answer, the plaintiff will take judgments Title to N.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sect. 32 Twp. 7 N. R. W. Injunction cancellation of Patents with interest thereon at the rate of — per cent per annum from the — day of — 191- and costs of suit. W. L. Melton, Clerk.

17 (Return of Sheriff on said Summons.)

STATE OF OKLAHOMA,  
Grady County, ss:

Received this summons this 12th day of March, 1912 at 4 o'clock P. M. and as commanded therein I summoned the following persons of the defendants within named at the times following, to-wit:

Frank Reynolds, March 14th, 1912.

C. A. Reynolds, Legal Guardian of Frank Reynolds March 14th 1912, by delivering to each of said defendants, personally, in said county, a true and certified copy of the within summons, with all the endorsements, to — on this — day of —, 191-, in Grady County, Oklahoma, by leaving for each of said defendants at — usual place of residence of each in said county, a true and certified copy of the within summons, with all the endorsements thereon.

The following persons of the defendants within named not found in said County:

JOHN C. LEWIS, *Sheriff,*  
By J. A. THOMPSON, *Deputy.*

*Sheriff's Fees.*

Serving Summons, first person .....	\$ .50
Additional persons .....	.25
2 copies of summons .....	.50
Mileage 9 miles .....	.90
Total .....	\$2.15

Issued M'ch 12<sup>th</sup>, 1912.

Returnable M'ch 22, 1912.

And due April 12, 1912.

Filed M'ch 16, 1912.

W. L. MELTON, *Clerk.*

BOND & MELTON,  
*Attorneys for Plaintiff.*

218 And thereafter, to-wit, on the 4th day of April, A. D. 1912, there was entered in said — and filed with the Clerk of the said Court, a demurrer; which said demurrer, together with the endorsements thereon, is in words and figures as follows, to-wit:

219 In the Superior Court of Grady County, Oklahoma.

No. 399.

HARRY F. HILL, a Minor, Suing by His Next Friend and Natural Guardian, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, Defendant.

*Demurrer.*

Comes now the defendant in the above entitled and numbered cause, by his attorney F. E. Riddle, and files this his demurrer to the petition of plaintiff filed herein, and for such demurrer states:

First. That said petition does not state facts sufficient to constitute a cause of action against this defendant and to entitled plaintiff to the relief prayed for.

Second. That said petition shows on its fact that plaintiff has no cause of action against this defendant and that he is not entitled to the relief prayed for against him.

Third. That said petition and the exhibits attached thereto show that the decision of the Secretary of the Interior was based upon controverted questions of fact.

Wherefore, defendant prays judgment of the Court.

F. E. RIDDLE,

*Attorney for Defendant.*

Endorsed: Filed April 4, 1912. W. L. Melton, Clerk of Superior Court.

220 And this cause coming on for hearing upon the said demurrer, and the Court, after hearing argument of counsel in favor of and against said Demurrer, and being fully advised in the premises, overrules said demurrer. To which Judgment, Order and Ruling of the Court, the Defendant at the time excepted and excepts.

221 And thereafter, to-wit, on the 30th day of April, A. D. 1912, there was filed in said cause, with the said Clerk of the Superior Court in and for the said county and State, a Motion for Appointment of Guardian Ad Litem; which said Motion, together with the endorsements thereon, is in words and figures as follows, to-wit:

222 In the Superior Court within and for Grady County, State of Oklahoma.

HARRY F. HILL, a Minor, Suing by His Next Friend and Natural Guardian, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, a Minor, Defendant.

*Motion for Appointment of Guardian Ad Litem.*

Comes now, the plaintiff in the above styled and entitled cause and represents to the court that said defendant is an infant, that a guardian has not been appointed for said suit, that service of summons has been made in said cause as by law provided, that said defendant has neglected to apply for the appointment of a guardian for said suit.

Wherefore, plaintiff asks that the Court appoint a Guardian ad litem to appear and defend said cause for said minor.

BOND AND MELTON,

*Attorneys for Plaintiff.*

Endorsed: Filed April 30-1912. W. L. Melton, Clerk of Superior Court.

223 And thereupon, to-wit, on the 30th day of April, there was entered in said cause, with the said Clerk of the Superior Court in and for the said County and State aforesaid an Order appointing Guardian Ad Litem for the defendant; which said Order, together with the endorsements thereon, is in words and figures as follows, to-wit:

224 In the Superior Court within and for Grady County, State of Oklahoma.

HARRY F. HILL, a Minor, Suing by His Next Friend and Natural Guardian, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, a Minor, Defendant.

*Order Appointing Guardian ad Litem.*

On this the 30th day of April, 1912, came on to be heard the motion in the above styled and entitled cause for the appointment of Guardian ad litem; and the Court having been fully advised in the premises is of the opinion that a Guardian ad Litem should be appointed to appear and defend for said defendant.

It is therefore, ordered, adjudged and decreed by the Court that Harry Hammerly be appointed guardian ad litem for the above named defendants.

WILL LINN, Judge.



Endorsements: Filed April 30, 1912. W. L. Melton, Clerk of Superior Court.

225 And thereafter, to-wit, on the 1st day of June, A. D. 1912, there was filed in the above entitled cause, with the said Clerk of the Superior Court in and for the County and State aforesaid, an Answer of Guardian Ad Litem which said Answer, together with the endorsements thereon is in words and figures as follows, to-wit:

226 In the Superior Court of Grady County, Oklahoma.

HARRY F. HILL, Plaintiff,  
vs.  
FRANK REYNOLDS, Defendant.

*Answer of Guardian ad Litem.*

Comes now Harry Hammerly, as guardian ad litem appointed herein by the court to defend for the minor named herein, and files this his answer as such guardian ad litem, and for such answer avers that at the time of his appointment as such guardian the summons had been regularly served upon the minor herein named.

For further answer herein this defendant denies each and singular every allegation in said petition alleged.

Wherefore, this defendant prays that said plaintiff take nothing by reason of said suit and on final hearing said defendant have his costs herein expended.

HARRY HAMMERLY,  
Guardian ad Litem,  
By F. E. RIDDLE,  
*His Attorney.*

Endorsements: Filed June 1, 1912. W. L. Melton, Clerk of Superior Court.

227 And thereafter, to-wit, on the 31st day of July, A. D. 1912, there are filed in the above entitled cause, with the said Clerk of the Superior Court within and for the County and State aforesaid, an Answer; which said answer together with the endorsements thereon, is in words and figures as follows, to-wit:

228 In the Supreme Court of Grady County, Oklahoma.

No. 399.

HARRY F. HILL, a Minor, Sueing by and thru His Next Friend  
and Guardian, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, Defendant.

*Answer.*

Comes now the defendant in the above entitled cause and for answer to the plaintiff's petition filed herein denies each and singular every allegation in said petition alleged.

Defendant avers the truth to be that the filing of this suit by the plaintiff and the claim of ownership of the land involved belonging to this defendant has brought this defendant's title to said land in question and has cast a cloud on defendant's title to said land which he is entitled to have removed and his title quieted by a decree of this court.

Defendant admits that the record, decisions and proceedings attached to the plaintiff's petition includes all the evidence, records and proceedings introduced and had before the land department but denies that said land department of the Secretary of Interior made any gross mistake of fact as alleged or committed any error of law as alleged. The defendant avers that this court has no jurisdiction or authority to grant the relief prayed for upon the petition and exhibits attached thereto.

Wherefore defendant prays that the plaintiff take nothing by reason of this suit and that his petition be dismissed and that the defendant's title be quieted in him and the cloud existing upon said title by reason of plaintiffs suit and assertion of title  
229 be removed and prays for such other general and special relief to which he may be entitled and for his costs.

F. E. RIDDLE,

*Attorney for Defendant.*

Endorsements: Filed July 21, 1912. W. L. Melton, Clerk of Superior Court.

230 And thereafter, to-wit, on the 12th day of October, A. D. 1912, there was filed in the above styled cause of action, with the said Clerk of the Superior Court within and for the said County and State aforesaid, and entered in the said cause, an order appointing Receiver; which said Order, together with all the endorsements thereon, is in words and figures as follows, to-wit:

231 In the Superior Court of Grady County, State of Oklahoma.

No. 399. Consolidated.

HARRY F. HILL, Plaintiff,

vs.

FRANK REYNOLDS, Defendant.

*Order Appointing Receiver.*

Now on this the 11th day of October, 1912, the parties to this cause appearing, by attorney, and it being agreed by all parties herein and by the parties and attorneys in causes numbers 400, 401, 402, 403, in this court, which are and have been consolidated with this cause number 399, for purposes of appointment — Receiver, that it will be for the best interest of all parties that a Receiver be appointed by the court to take charge and control of the land involved in this consolidated cause and collect and hold the rents therefrom pending the orders of the court, and the court being fully advised in the premises is of the opinion that the best interests of all parties concerned in this consolidated cause will be best protected by the appointment of a Receiver, it is,

Therefore, ordered that F. C. Hall, of Chickasha be and he is hereby appointed Receiver of the following land to-wit: The north half of the Southeast quarter of Section thirty-two, in Township seven north, range six west, involved in this cause 399. The north half of the northeast quarter of the northwest quarter and the west half of the northwest quarter of section thirty-three, in township seven north, range six west, involved in cause 400. The north half of the northeast quarter of section thirty-two, in township seven north, Range six west, involved in cause 401. The west half

232 of the southwest quarter of section thirty-three in township seven north, range six west, involved in cause 402. The north half of the southeast quarter of the Northeast quarter and the south half of the southeast quarter of the northeast quarter and the southwest quarter of the northeast quarter of section thirty-two, in township seven north, range six west, involved in cause 403. All of such land being located in Grady County, Oklahoma.

Such receiver shall qualify as required by law and shall execute a good and sufficient bond to be approved by the clerk of this court in the sum of Two Thousand Dollars.

Such receiver shall take charge and control of all the land described herein, collect the rents therefrom for the year 1912, and rent and collect the rents therefrom, pending the determination of this cause, or the subsequent orders of this court. He shall keep a separate account of all rents and expenses in connection with each separate tract of land described herein and involved in the different

causes consolidated with this cause, and shall make report of his receivership from time to time as may be required.

WILL LINN,  
*Judge of the Superior Court.*

Agreed to,

BOND & MELTON,

*Attorneys for Plaintiff in Causes 399 to 403.*

F. E. RIDDLE,

*Attorney for Defendants in Causes 399 to 403.*

Endorsed: Filed Oct. 12, 1912. W. L. Melton, Clerk of Superior Court.

233 And thereafter, to-wit, on the 12th day of October A. D. 1912, there was filed in the above entitled action, with the Clerk of the said Court in and for said County and State aforesaid, a bond and oath of receiver; which said bond and oath of receiver, together with the endorsements thereon is in words and figures as follows, to-wit:

234 In Superior Court.

STATE OF OKLAHOMA,

*Grady County:*

HARRY F. HILL, Plaintiff,

vs.

FRANK REYNOLDS, Defendant.

No. 399, with which causes 400, 401-402 & 403 in this Court, are consolidated, for Receivership purposes.

Know all men by these presents:

That we, F. C. Hall as Principal, and ——— as sureties are held and firmly bound unto Harry F. Hill, J. B. Hill, Louis James, Frank Reynolds, Willie Reynolds, Selden Reynolds and Ethel A. Reynolds in the penal sum of Two Thousand Dollars, for the payment of which sum, well and truly to be made, we do bind ourselves and each of us, our heirs, executors and administrators, jointly and severally by these presents.

The condition of the above obligation is such, That whereas, the above named Principal F. C. Hall was on the 11th day of October 1912, appointed Receiver in the above entitled causes, where in Harry F. Hill, H. B. Hill and Louis James are Plaintiffs and Frank Reynolds, Willie Reynolds, Selden Reynolds and Ethel A. Reynolds are defendants and required by said order of appointment to execute an undertaking in the sum aforesaid, to the effect that he would faithfully discharge the duties of Receiver in said action and obey the orders of the Court therein.

Now therefore, if the said F. C. Hall shall faithfully discharge the duties of Receiver in said action and obey the orders of the Court

therein, then this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof, we have hereunto subscribed our names this 12th day of October, 1912.

F. C. HALL.  
WM. INMAN.  
ED. F. JOHNS.

235 STATE OF OKLAHOMA,  
*Grady County:*

The undersigned, sureties on the foregoing bond, being duly sworn on oath each for himself says, I am a resident householder and freeholder within the State of Oklahoma, and have property within said State worth over and above all my just debts and liabilities, exclusive of property exempt from execution, the sum set out and stated below, that is to say:

I, Wm. Inman am worth the sum of \$2000.00.

I, Ed. F. Johns, am worth the sum of \$2000.00.

WM. INMAN.  
ED. F. JOHNS:

Subscribed and sworn to before me, this 12th day of Oct. 1912.

The foregoing bond approved this 12th day of Oct. 1912.

[SEAL.]

W. L. MELTON, *Clerk.*

*Oath of Receiver.*

STATE OF OKLAHOMA,  
*Grady County, ss:*

I, F. C. Hall appointed receiver in the within entitled cause, do solemnly swear that I will faithfully perform the duties of such receiver and obey the orders of the Court therein, to the best of my knowledge and ability, So Help Me God.

F. C. HALL.

Subscribed and sworn to before me, this 12th day of Oct. 1912.

W. L. MELTON, *Clerk.*

Endorsed: Filed Oct. 12, 1912. W. L. Melton, Clerk Superior Court.

236 In the Superior Court of Grady County, Oklahoma.

No. 399.

HARRY F. HILL, Plaintiff,  
vs.  
FRANK REYNOLDS, Defendant.

And now, to-wit, on this — day of — A. D. 191—, the same being one of the regular days of the — term of the above entitled

court, the above entitled cause came on regularly to be heard and for trial, and the plaintiff appearing in person and by his attorneys, Bond & Melton, and the defendant appearing in person and by his attorney, F. E. Riddle, and both parties announcing ready for trial, and both parties having waived a jury and agreeing to try the case to the Court, and thereupon the following proceedings were had and done, to-wit:

237 It is agreed that all the oral evidence introduced and admitted as testimony before the department of Interior and considered by the Secretary of Interior in rendering the opinion now complained of by the plaintiffs is hereby admitted as evidence to be considered by the court in this case.

The opinions and decisions of the Secretary of Interior and of the departmental officers may be offered, subject, however, to objections as to competency and immateriality, with the exception of the opinion of the Secretary of the Interior now complained of by the plaintiffs.

It is further agreed that all of the evidence and exhibits introduced at the original trial of the case and departmental decisions may be introduced by the plaintiff without objection on the part of the defendants on the ground that they are not the original or certified copies, the defendant, however, expressly reserving the right to object to the same as to their competency and materiality of the evidence and such exhibits on other grounds.

See Pages — to — of Case Made.

By Counsel for Plaintiff: We desire to offer in evidence the decision of the Commission to the Five Civilized Tribes in this contest action, the decision of the Commissioner of Indian Affairs and the decision of the Secretary of the Interior, all of which decisions were rendered prior to the decision complained of here, but being a part of the record in these proceedings before the department of the interior.

By Counsel for the Defendants: To which the defendants object as incompetent, irrelevant and immaterial and not proving or tending to prove any issue in this case.

238 Which objection was by the Court overruled.

The defendant at the time, in open court, duly saving an exception to said ruling.

(See pages — to — of Case Made for Exhibits.)

By the Court: Gentlemen, excuse me a moment. Are there five of these cases?

By Counsel for the Defendant: Yes sir.

By the Court: All to stand on one?

By Counsel for the Plaintiff: Yes sir.

By Counsel for the Plaintiff: Plaintiff now offers in evidence a Certified Copy of the Will of C. L. Campbell, Deceased, together with the signatures and Certificate of Probate, which was introduced in evidence before the Department of the Interior upon the trial of this case there. (Identified by the Reporter as Exhibit "D.")

By Counsel for Defendants: The defendants object to the intro-

duction of the will because it is incompetent, irrelevant and immaterial and for the further reason that it is shown from the petition and exhibits filed herein that said will was not considered by the Secretary of the Interior, but excluded, in rendering the opinion complained of by the plaintiff in this case.

Which objection was then and there by the court, overruled. To which ruling of the court the defendant duly saved an exception.

(Which said will, identified as Exhibit "D," together with the endorsements thereon, is in words and figures as follows:

239

## DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

WASHINGTON, Aug. 3, 1912.

I, C. F. Hauke, Acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of a paper purporting to be a certified copy as the same appears on file in this Office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this Office to be affixed, on the day and year first above written.

[SEAL.]

C. F. HAUKE,  
*Acting Commissioner.*

240 UNITED STATES OF AMERICA:

CHICKASAW NATION,

*Indian Territory:*

Know all men by these presents that I, C. L. Campbell of Chickasha, Chickasaw Nation, Indian Territory, being in ill health but of sound and disposing mind and memory do make and publish this my last will and testament hereby revoking all former wills by me at any time heretofore made "first," I hereby make constitute and appoint W. L. Sawyers of Chickasha, Chickasaw Nation, Indian Territory, to be my sole executor of my last will directing my said executor to pay all my just debts, funeral expenses, expenses of executing this will and the legacies herein after given out of my estate.

"Second." After the paying of said debts and funeral expenses, the payment of which is hereinafter provided for, I give and bequeath to my wife S. L. Campbell, and my five minor children, Mont Campbell, Holmes Campbell, Lawrence Campbell, omits John see next page, and Rex Campbell, my home place known as Hill drop bounded on the north by W. D. Barleys and C. M. Kirdlands farms on the East by John Ireton pasture on the south by Tom Fletcher's farm and the Washita River and on the west by James Fitzpatrick's and Dan Galand's farms also certain pasture on the head of East Bitter Creek bounded on the north by J. H. Tuttle pasture on the East by Joe Perry's pasture occupied by Lauer Borthers on the south by Emmet McCry's and the Plato Brothers farms and on the west by Ed. White and Milos Beddingfield's farm,



to share the same equally, my wife S. L. Campbell to receive a child's part, I further will and bequeath to my wife S. L. Campbell and my five minor children, Mont, Holmes, Lawrence, John and Rex Campbell, the proceeds of my twenty thousand dollars life insurance policy No. 387068, in the New York Life Insurance

Company, to share the same equally, my wife S. L. Campbell, 241 to receive a child's part, the same to be paid to her as soon as collected, the remain- of the proceeds of said policy to be turned over to Jos. H. Tuttle of Minco, Chickasaw Nation, Indian Territory, whom I hereby constitute and appoint guardian for my aforesaid five minor children, Mont, Holmes, Lawrence, John and Rex Campbell, the same to be safely and profitably invested, the interest of which to be used by this guardian Jos. H. Tuttle in educating the afore minor children, but under no consideration shall any part of said principal be used or appropriated by the said guardian for the educating of said minor- not even after arriving at lawful age until Rex Campbell, my youngest son and heir shall have received an education equal to the other minor- or shall have arrived at lawful age at which time their guardian Jos. H. Tuttle, shall pay to each of them their pro rate part of said principal with interest if any that has accrued therefrom.

"Third." I devise and bequeath all of the following property Two Hundred forty three head of cattle now being fed on my farms, five hundred head more or less of stock cattle now on my farm, all of which are branded as follows: on left side and X on left hip all of my corn, wheat, and other products on my farm, all of my mules, horses, hogs and farm implements, wagon, buggies, carriages &c. all of bridge stock estimated at above fifteen hundred dollars, in the bridge across the Washita River between my farm and Chickasha, Indian Territory, all of my Bank Stock six thousand five hundred dollars which I hold in the Citizens Bank of Chickasha, Indian Territory, all of my town property and lots in the town of Chickasha, Indian Territory, as shown by the plat of said town all notes choses in action and money due me and all other property belonging to me of whatsoever kind not herebefore mentioned (except my household furniture and wearing apparel) to my wife, S. L. Campbell, Adelaide Johnson, Carry Tuttle, Mont,

Holmes, Lawrence, John and Rex Campbell, share and alike 242 to be paid to S. L. Campbell, Adelaide Johnson and Carry Tuttle their respective shares as soon after my decease but within one year as *convonally* may be done and the respective shares, of the minor- Mont, Holmes, Lawrence, John, and Rex Campbell, to be paid to their guardian Jos. H. Tuttle, as soon after my deceased but within one year as *convenonally* may be done. Their said guardian Jos. H. Tuttle shall safely and profitably invest the same and as each of the aforesaid minor- shall arrive at lawful age he shall pay to him his pro rate part of the said sum of money due the said heirs. It is my further will that Jos. H. Tuttle the guardian herein before mentioned shall receive and have full control of all real and personal property herein before provided for and shall be guardian of the person and the estate of said minor-

and shall hold the estate in trust and turn over — the respective minor upon the prorate part of the same together with all profit arriving therefrom.

"Fourth." And for the payment of the legacies aforesaid I give and devise to my said executor W. L. Sawyers all the personal estate owned by me at my decease except my house hold furniture and wearing apparel to pay the said legacies.

"Fifth." I give and devise to my wife, S. L. Campbell all my household furniture and wearing apparel for her sole use.

"Sixth." It is my will that this my last will and testament be probated in the probate court of the Chickasaw Nation, Indian Territory, but should the probate court of the Chickasaw Nation by operation of law or otherwise cease to exist then in that event to be probated in such other court as may be established by law in its stead.

243 "Seventh." It is my further will that before my executor

W. L. Sawyers shall take charge of any of the property herein bequeathed for the purpose of executing this my last will and testament he shall make and enter into a good and sufficient bond to be approved by the court for the faithful performance of his duties as such executor in double the amount of the appraised value of the property herein bequeathed.

"Eighth." It is my further will that Jos. H. Tuttle the guardian of the minors heirs herein mentioned shall enter into a good and sufficient bond to be approved by the Court for the faithful performance of his duties as such guardian in double the appraised value of the property about to come into his hands and that no part of said minor heirs money or property shall be turned over to him until he executes such Bond.

In testimony whereof I have hereto set my hand and publish and declare this to be my last will and testament in the presence of the witnesses named below this 22nd day of October A. D. 1896.

C. L. CAMPBELL

Signed published and declared by the said C. L. Campbell as and for his last will and testament in the presence of us who in his presence and in the presence of each other and at his request have subscribed our names as witnesses hereto.

J. B. SPARKS.  
W. J. ERWIN.

This is to certify that the above — foregoing is a true and correct copy of the original last will and testament of C. L. Campbell deceased on record in my office.

Witness my hand and seal of office this 25th day of April 1901.

JNO. C. ATKINS, [SEAL.]

Co. & Probate Clerk.

244 Regular Clerk being sick is absent the Judge appoints Odus Collins Clerk pro tem. Appraisement of the personal estate of C. L. Campbell approved by County Judge this 16th day

of December the year of our Lord Eighteen Hundred and ninety  
 six.

J. H. Bond was appointed to be appraiser Ben Vaughn and  
 C. L. Campbell deceased.

The appraisement received and approved by the county judge this  
 day.

W. L. Sawyers was appointed administrator of the Estate of C.  
 L. Campbell deceased, and approved by County Judge this day Jas.  
 H. Tuttle was appointed guardian of minor children of C. L.  
 Campbell estate deceased and approved by County Judge.

RUBEN CARNEY,  
*County and Probate Judge.*

Attest:

ODUS COLLINS,  
*Co. Clerk Protem.*

This is to certify that the above foregoing is a true and correct  
 copy of the original minutes of the proceedings of the Court on  
 record in my office.

Witness my hand and seal of office this 25th day of April, 1904.

[SEAL.]

JNO. C. ATKINS,  
*Co. & Probate Clerk.*

Endorsed: "Exhibit D." "G. U. McKinney, Reporter."

245 By Counsel for Plaintiff: Plaintiff also offers in evidence  
 a quit-claim deed from Holmes Campbell and J. H. Tuttle,  
 dated December 24th, 1902.

(Said paper was identified as Exhibit "F" by reporter.)

By Counsel for Defendants: Objected to by the defendants for  
 the reason that it is incompetent, irrelevant and shows from the  
 petition and exhibits attached thereto that the same was excluded  
 by the Secretary of the Interior and not considered by him in render-  
 ing the opinion complained of by plaintiff.

Which objection was by the Court overruled. To which ruling of  
 the Court the defendant then and there duly saved an exception.

(Which said Exhibit "F" is in words and figures as follows,  
 to-wit:)

246 By Counsel for Plaintiff: Plaintiffs offer in evidence the  
 bill of sale or quit claim deed of J. H. Tuttle and others to  
 Dave Hill, dated the 18th day of November, 1902, which was intro-  
 duced in the trial of the contest case before the Department of the  
 Interior.

(Identified by Reporter as Exhibit "E".)

By Counsel for Defendants: Objected to by the defendants for  
 the reason it is incompetent, irrelevant and shows from the petition  
 and exhibits attached thereto that the same was excluded by the  
 Secretary of the Interior and not considered by him in rendering  
 the opinion complained of by plaintiff.

Which objection was then and there overruled by the Court. To

which ruling of the court the defendant then and there duly saved an exception.

(Which said Exhibit "E", together with the endorsements thereon, is in words and figures as follows, to-wit:)

247

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, Aug. 3, 1912.

I, C. F. Hauke, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

C. F. HAUKE,  
*Acting Commissioner.*

(Attached to the above certificate are the following Exhibits, which were introduced in evidence as shown in the following pages of this Case made. Exhibits "E" "F" "G" "H" "I". By Reporter.)

248 INDIAN TERRITORY,  
*Southern District:*

Know all men by these presents:

That we, James H. Tuttle, a Chickasaw Indian by intermarriage of Minco, I. T., and legally and duly appointed and acting guardian of John Campbell and Rex Campbell, minor heirs of Charles L. Campbell, deceased, and Mrs. Sallie L. (Campbell) Minter, Mont Campbell, Holmes Campbell and L. A. Campbell, all citizens and members of the Chickasaw tribe of Indians, for and in consideration of the sum of Sixteen Hundred Dollars (\$1600.00) to us in hand paid by Dave Hill, the receipt whereof is hereby acknowledged, have this day, and do by these presents, bargain, sell, convey and quit-claim unto the said Dave Hill, his heirs, assigns and legal representatives, the following described land and premises, to-wit:

About 560 acres of land, 320 acres being the West  $\frac{1}{2}$  of Sec. 33 T. 7 N. R. 6 W., and about 160 acres of the East  $\frac{1}{2}$  of Sec. 32 T. 7 N. R. 6 W. & 80 acres being in S.  $\frac{1}{2}$  of Sec. 29 T. 7 N. R. 6 W. in Chickasaw Nation, I. T. with all improvements thereon, and being known as a part of the Campbell farm, to have and to hold unto the said Dave Hill, his heirs, assigns and legal representatives, forever; and we, the grantors, represent that we have a good right to sell and convey the quit-claim, the possessory right to the above described land unto the said Dave Hill, his heirs, assigns and legal representatives.

In testimony whereof we hereunto subscribe our names, this the 18th day of November, 1902.

JAMES H. TUTTLE,  
M. T. CAMPBELL,  
SALLIE L. MINTER,  
L. A. CAMPBELL,  
HOLMES CAMPBELL.

949 INDIAN TERRITORY,  
Southern District:

Personally appeared before me the undersigned authority, James H. Tuttle, Guardian of John Campbell, and Rex Campbell, to me well known to be the person whose name is subscribed to the foregoing instrument as one of the parties grantor, and who acknowledged to me that he had executed the same for the purposes and consideration therein set forth and mention, and I do so certify.

[SEAL.]

J. A. STEWART,  
Notary Public.

My com. expires 2/18/1905.

INDIAN TERRITORY,  
Southern District:

Personally appeared before me the undersigned authority, Mrs. Sallie L. (Campbell) Minter, Mont Campbell Holmes Campbell, and L. A. Campbell, each personally well known to me to be the persons whose names are subscribed to the foregoing instrument as the parties grantor therein, and such acknowledged to me that they had executed the foregoing instrument for the uses, purposes and considerations therein contained and set forth, and I do so certify.

[SEAL.]

G. G. BAREFOOT,  
Notary Public.

Endorsed: "Exhibit E". G. U. McKinney, Reporter.

250

*Quitclaim Deed.*

Know all men by these presents: That I, Holmes Campbell, and J. H. Tuttle, for and in consideration of the sum of Seven hundred and fifty dollars, to him paid by Dave Hill do hereby grant, sell, and quit-claim unto the said Dave Hill, and unto his heirs and assigns forever, the following lands lying in the Indian Territory, Southern District, to-wit:

North  $\frac{1}{2}$  of Southwest Quarter of Section 32, and

North  $\frac{1}{2}$  of South East Quarter of Section 32, both in Range 7 west, township 7 North.

Together with all improvements situated thereon. To have and to hold the same unto the said Dave Hill, and unto his heirs and assigns forever, with all appurtenances thereto belonging.

And I do hereby for myself and my heirs, executors and administrators, covenant with the said grantee and his heirs and assigns that the granted premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claimed by, through or under me.

And I, ———, wife, of the said ———, for and in consideration of the said sum of money do hereby release and relin-

quish unto the said — — all my right of dower in and to said lands.

Witness our hands and seals this 24th day of December, 1902.

H. C. CAMPBELL. [SEAL.]

J. H. TUTTLE. [SEAL.]

251

*Acknowledgment.*

INDIAN TERRITORY,  
*Southern District, ss:*

Be it remembered, that on this day came before me, the undersigned, Notary Public within and for the County aforesaid duly commissioned and acting Holmes Campbell, and J. H. Tuttle, to me well known as grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me the said — — wife of the said — — to me well known, and in the absence of her husband, declared that she had, of her own free will, signed and sealed the relinquishment of dower in the foregoing deed for the consideration and purposes therein contained and set forth, without compulsion of undue influence of her said husband.

Witness my hand and seal as such Notary this 24th day of December, 1902.

[SEAL.]

REFORD BOND.

My commission expires —.

Endorsed: "Exhibit "F." G. U. McKinney, Reporter.

252 By Counsel for Plaintiff: Also the plaintiff offers in evidence quit claim deed from S. L. Campbell to J. W. Blassingame, being an instrument introduced in the contest case before the Department of the Interior.

(Identified as Exhibit "G" by reporter.)

(Which said Exhibit "G," together with the endorsements thereon is in words and figures as follows, to-wit.)

253 CITY OF CHICKASHA,  
*County of Pickin,*  
*Southern District Indian Territory:*

Know all men by these presents, that I, Mrs. S. L. Campbell of the County of Pickin, Indian Territory, for and in consideration of the sum of Two Hundred and Fifty no/100 Dollars (\$250.00) to me in hand paid by J. W. Blassingame of Pontoc County, Indian Territory, the receipt of which is hereby acknowledged, I have this day bargained, sold and delivered and by these presents and this instrument of writing the same being a quit-claim deed, do bargain, sell and deliver to the said J. W. Blassingame all of my right

interest in and to the following described tract or parcel of land  
 wit: What is known as the Campbell North Horse Pasture, lying  
 between East and West Bitter Creeks and extending about one half  
 mile East and beyond East Bitter Creek, also all wire fence and fence  
 on said tract of land. It is expressly understood that the in-  
 terest conveyed by this instrument is simply that of possession. Also  
 the following tract of land, to-wit: one section to be taken out of the  
 north west corner of her tract of land. Beginning on the East Bank  
 of West Bitter Creek, about one hundred yards south of the Chick-  
 asha and Purcell road, thence South one mile, thence east one mile,  
 thence north one mile, thence west one mile to place of beginning,  
 with all improvements thereon, and right of possession. To have  
 and to hold unto the said J. W. Blassingame his heirs and assigns,  
 in consideration to be paid to the said Mrs. S. L. Campbell for the  
 said second tract of land mentioned herein by the said J. W. Blass-  
 ingame is 18 head of Chickasaw Yearlings (Steers) now in the  
 possession of Winston Bradley, the same are to be turned over to  
 the said Mrs. S. L. Campbell or her agent (the said cattle)  
 at her place between the first and tenth of April 1899.  
 Witness my hand this the 21st day of January 1899.  
 S. L. CAMPBELL.

Witness- to signature:

J. C. ERWIN,

R. W. SHEPHERD.

(Stamp.)

Endorsed: "Exhibit G." G. U. McKinney, Reporter.

55 By Counsel for the Plaintiff: Also we wish to introduce in  
 evidence quit-claim deed from J. W. Blassingame to J. W.  
 Brimage, dated December 10th, 1902, together with the assignment  
 endorsed thereon.

(Identified by Reporter as Exhibit "H.")

(Which said Exhibit "H" together with the endorsements thereon,  
 is in words and figures as follows, to-wit:)

56

*Quitclaim Deed.*

Know all men by these presents, that we James W. Blassingame,  
 Chickasaw Indian for and in consideration of the sum of Fifteen  
 Hundred Dollars, to him paid by John W. Brimage, do hereby  
 grant, sell, and quit-claim unto the said John W. Brimage, a  
 Choctaw Indian, and unto his heirs and assigns forever, the following  
 lands lying in the Chickasaw Nation to-wit:

Full and absolute possession of one section of Land described as  
 follows, Beginning at a point on the East Bank of West Bitter Creek  
 about one hundred yards south of the Chickasha and Purcell road,  
 thence south one mile, thence East one mile, thence north one mile,  
 thence west one mile to place of beginning, together with all im-  
 provements thereon. The above described land being the same con-



veyed to Grantor herein by Mrs. S. L. Campbell, by her deed dated January 21st, 1899, and being same land now in possession of Grantors herein under said conveyance.

To Have and to Hold the same unto the said John W. Brimage and unto his heirs and assigns forever, with all appurtenances thereto belonging.

And I do hereby for myself and my heirs, executors and administrators, covenant with the said grantee and his heirs and assigns that the granted premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under me.

257 Witness our hands and seals this tenth day of Dec., 1902.

JAMES W. BLASSINGAME. [SEAL.]

*Acknowledgment.*

INDIAN TERRITORY,  
*Southern District, ss:*

Be it remembered, that on this day came before me, the undersigned, B. F. Holding, a Notary Public *with* and for the County aforesaid duly commissioned and acting James W. Blassingame, to me well known as grantor in the foregoing Deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this tenth day of Dec., 1902.

[SEAL.]

B. F. HOLDING.

My Commission expires Oct. 14, 1905.

Endorsed: "Exhibit H." G. U. McKinney, Reporter.

258 By Counsel for the Plaintiff: Plaintiff also offers in evidence Quit Claim deed of Blassingame to Brimage, dated December 10th, 1902, with his endorsement thereon.

(Identified by reporter as Exhibit "I.")

Which said Exhibit "I" together with the endorsements thereon, is in words and figures as follows, to-wit:

259 UNITED STATES OF AMERICA,  
*Indian Territory, Southern District:*

Know all men by these presents, that I the undersigned J. W. Blassingame, a member of the Chickasaw, Tribe or Nation of Indians, and a resident of the Chickasaw Nation, Indian Territory.

For and in consideration of the sum of Fifteen Hundred Dollars, to me paid, by J. W. Brimage, I do by these presents sell, assign, transfer and deliver unto the said J. W. Brimage, and unto his heirs and assigns, all my improvements of whatsoever kind or nature

consisting of three houses, two wheat graneries, two corn cribs, one  
 le and lot, out houses, barns, and all fencing, together with the  
 solute possession thereof. Said improvements being situated upon  
 the following described lands, towit: The South half ( $\frac{1}{2}$ ) of the  
 Southeast quarter ( $\frac{1}{4}$ ) of section Twenty Nine (29) and the North  
 East Quarter ( $\frac{1}{4}$ ) and the North Half ( $\frac{1}{2}$ ) of the Southeast Quar-  
 ter ( $\frac{1}{4}$ ) of Section Thirty Two (32). Also the West Half ( $\frac{1}{2}$ ) of  
 Section Thirty Three (33) All in Township Seven (7) N. of Range  
 6 (6) W. Chickasaw Nation Indian Territory.

And I the undersigned J. W. Blasingame, for myself and for my  
 heirs, executors and administrators hereby obligate myself and my  
 heirs, executors and administrators, to warrant and defend the title  
 to the improvements hereby conveyed, and hereby surrender the full  
 and absolute possession within and to said improvements, unto the  
 said J. W. Brimage, and unto his heirs and assigns.

In Witness Whereof, I have hereunto set my hand this 10th day  
 of December, 1902.

J. W. BLASINGAME.

60 INDIAN TERRITORY,  
*Southern District:*

Be it remembered, That on this day came before me, the under-  
 signed B. F. Holding, a Notary Public within and for the Southern  
 District and Territory, aforesaid, duly acting and commissioned,  
 J. W. Blasingame, to me well known as party Grantor, in the fore-  
 going instrument, and acknowledged that he executed the same for  
 the purposes and consideration therein set forth.

In witness Whereof, I hereunto set my hand and seal as such  
 Notary Public this 10th day of December, 1902.

[SEAL.]

B. F. HOLDING,  
*Notary Public.*

My Comm. Expires Oct. 14, 1905.

261 UNITED STATES OF AMERICA,  
*Central District, Indian Territory:*

March 5th, 1903.

I, J. W. Brimage, the undersigned for the sum of Fifty Dollars  
 Cash in Hand paid by C. A. Reynolds, I do by these presence assign  
 Transfer and Deliver unto the said C. A. Reynolds his heirs and as-  
 signs all my wright title and interest in and to all improvements on  
 the within described lands and hereby surrender possession thereof  
 to the said C. A. Reynolds.

This 6th day of March, 1903.

JOHN W. BRIMAGE. [SEAL.]

Witness:

[SEAL.] H. L. COLEMAN,

*Notary Public within and for the  
 Central District, at Craig, I. T.*

262 By Counsel for Plaintiff: Plaintiff now offers in evidence the application for filing, all being part of the records introduced before the Department of the Interior on the trial of this contest.

(Here follows Exhibit J and J. 1 tendered in evidence by the plaintiff.)

Department of the Interior.

Commissioner to the Five Civilized Tribes.

In the Matter of the Allotment of Lands of the Choctaws and Chickasaws.

Citizens by Blood and Intermarriage.

TISHOMINGO, INDIAN TERRITORY, July 13, 1903.

*Testimony of Charles A. Reynolds, in the Matter of the Allotment of the Lands of the Choctaws and Chickasaws to Willie Reynolds.*

CHARLES A. REYNOLDS being first duly sworn, testifies as follows:

Q. What is your name.

A. Charles A. Reynolds.

Q. What is your post office address?

A. Rush Springs, I. T.

Q. For whom are you making this application?

A. Willie Reynolds.

Q. Was the person for whom this application is made living on September 25, 1902?

A. Yes.

Q. Is he now living?

A. Yes.

Q. Has the person for whom you make this application received or applied for an allotment of land in the Creek, Cherokee or Seminole Nation?

A. No.

Q. How do you represent this person?

A. As his guardian.

Application is made for the following described land:

Roll.	No.	Subdivision.	Sec.	Town.	Range.	Area— acres	Appraised value— dols. cts.	Cert. No.
	4550	S2 of SE4	29	7N	6W	80	420	1709
		N2 NW4 NE4	32	7N	6W	20	110	530*
Chicka- saw by blood.		N2 NW4 NE4	32	7N	6W	20	110	19650
Land valued at \$440 cancelled from this application by decision in Chic. allotment contest No. 237 Co. copy attached.								
Application is made for the following de- scribed land, exclusive of the homestead designated.		S2 NW4 NE4	32	7N	6W	20	110	1772
		NE 4 NE 4	32	7N	6W	40	220*	

Total appraised value..... 860

(\*Red lines in error lands awarded to Willie Reynolds by decisions of U. S. Comr.)

Q. Have you been upon these lands and examined them with a view to making this selection?

A. Yes.

Q. Are you fully informed as to the location of the same and the character of the soil?

A. Yes.

Q. Are there any improvements on these lands?

A. Yes.

Q. What do the improvements consist of?

A. Two houses, 1 well, 1 shed, 120 acres in cultivation enclosed in a field.

Q. Who is the owner of the improvements?

A. Willie Reynolds.

Q. Does anyone else claim these lands or any part of them?

A. No.

Q. Are there any tribal schools, churches, court houses, jails, or other tribal public buildings located on these lands?

A. No.

264 Q. Is that portion of the land which you have designated as a homestead suitable for a home?

A. Yes.

Q. Do you in behalf of Willie Reynolds accept the above described land in allotment of the lands of the Choctaws and Chickasaws?

A. Yes.

(Signed)

CHARLES A. REYNOLDS.

INDIAN TERRITORY,

Southern District:

I, the undersigned, a Notary Public in and for said district, do certify that the foregoing statements of Charles A. Reynolds were

reduced to writing in his presence and were read to and subscribed by him in my presence at the time and place and in the manner mentioned in the caption he having been first sworn by me that the testimony he should give in the matter should be the truth, the whole truth and nothing but the truth.

Given under my hand and official seal this 13th day of July, 1903.

(Signed)  
[SEAL.]

JAMES WILKINSON,  
Notary Public.

Department of the Interior.

Commissioner to the Five Civilized Tribes:

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Chickasaw Allotment application for lands for Willie Reynolds, Chickasaw by blood, Roll No. 4550.

265 (Signed) THOS. RYAN,  
Acting Commissioner to the Five Civilized Tribes.

Muskogee, Oklahoma, May 27, 1912.

(Endorsed:) Exhibit J. G. U. McKinney, Reporter.

266 Department of the Interior.

Commissioner to the Five Civilized Tribes.

In the Matter of the Allotment of the lands of the Choctaws and Chickasaws.

Citizens by Blood and Intermarriage.

ARDMORE, INDIAN TERRITORY, Feb. 1, 1906.

*Testimony of Charles A. Reynolds in the Matter of the Allotment of the Lands of the Choctaws and Chickasaws to Willie Reynolds.*

CHARLAES A. REYNOLDS, being first duly sworn, testifies as follows:

Q. What is your name?

A. Charles A. Reynolds.

Q. What is your postoffice address?

A. Chickasha.

Q. From whom are you making this application?

A. Willie Reynolds.

Q. Was the person for whom this application is made living on September 25th, 1902?

A. Yes.

Q. Is he now living?

A. Yes.

Q. Has the person for whom you make this application received or applied for an allotment of land in the Creek, Cherokee or Seminole Nation?

A. No.

Q. How do you represent this person?

A. As guardian.

267 Application is made for the following described land:

Roll.	No.	Subdivision.
Chick.	4550	Appraised value of lands
B. B.		allotted 7/13/1903 \$860.00

H  
O  
M  
E  
S  
T  
E  
A  
D

	Sec.	Town.	Range.	Area.	Appraised value.	Cert. No.
Application is made for the following described land exclusive of the homestead designated.	NW4 SW4 SE4	31	7N	6W	'9 86	44.37
	less O. 14 cac for C. R. & W. Ry.					
	N 20.70 ac of lot <del>8</del> 1	6	6N	6W	20 70	134.55
						21154
	Total appraised value.....				178.92	

Q. Have you been upon these lands and examined them with view to making this selection?

A. Yes.

Q. Are you fully informed as to the location of the same and the character of the soil?

A. Yes.

Q. Are there any improvements on these lands?

A. Yes.

Q. What do the improvements consist of?

A. All fenced and partly in cultivation.

Q. Who is the owner of these improvements?

A. I am.

Q. Does any one else claim these lands or any part of them?

A. No.

Q. Are there any tribal schools, churches, court houses, jails or other tribal public buildings located on these lands?

A. No.

268 Q. Do you in behalf of Willie Reynolds accept the above described land in allotment of the lands of the Choctaws and Chickasaws?

A. Yes.

CHARLES A. REYNOLDS

Witness to mark:

INDIAN TERRITORY,  
*Southern District:*

I, the undersigned, a Notary Public in and for said district, do certify that the foregoing statements of Charles A. Reynolds were reduced to writing in his presence and were read to and subscribed by him in my presence at the time and place and in the matter mentioned in the caption he having been first sworn by me that the testimony he would give in the matter should be the truth, the whole truth and nothing but the truth.

Given under by hand and official seal this 1st day of Feb. 1906.

J. H. CARLOCK,  
*Notary Public.*

269

Department of the Interior.

Commissioner to the Five Civilized Tribes.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Chickasaw application for allotment for Willie Reynolds, Chickasaw by blood, Roll No. 4550 Oklahoma.

THOS. RYAN,  
*Acting Commissioner to the Five Civilized Tribes.*

Muskogee, May 27, 1912.

C. H. D.

Endorsed: "Exhibit J. 1." G. U. McKinney.

270 By Counsel for the Plaintiff:

Plaintiff now offers in evidence an amended complaint and exhibits in case No. 741, entitled Dave Hill, plaintiff vs. J. W. Blassingame and C. A. Reynolds, defendants, filed in the United States Court within and for the Southern District of the Indian Territory, which case was transferred by operation of law to the District Court of Grady County, Oklahoma. (Identified by the reporter as Exhibit K)

By Counsel for the Defendant: Objected to if the court please as incompetent, irrelevant and immaterial and not being the testimony before the interior department.



Which objection was then and there by the court sustained, to which ruling of the court the plaintiff duly saved an exception.

By Mr. Stewart: of counsel for the plaintiff—

That was before the Interior Department.

By Mr. Riddle: counsel for the defendant—

I don't know that the record shows anything of that kind.

By Mr. Melton: counsel for the plaintiff—

It was.

By Mr. Riddle: of counsel for the defendant—

We further object for the reason that the opinion of the secretary complained of in this case does not show that said petition and documents were considered in the rendition of said opinion and judgment of the Secretary and the record only shows it was introduced to show the facts that such a suit was instituted.

Which further objection by the defendant was then and there by the court sustained, to which ruling of the court the plaintiff duly saved an exception.

By Counsel for the Plaintiff:

We offer in evidence the judgment of the court in the case of Hill vs. Blassingame and Reynolds, same being in case No. 741, in the district Court of Grady County, bearing date of August 25, 1908.

(Identified by the reporter as Exhibit L)

By Counsel for the Defendant:

Objected to if the court please for the reason that it is incompetent, irrelevant and immaterial and not proving or tending to prove any issue in this case and for the reason that it does not show that such testimony was before the Secretary of the Interior and considered by him in rendering the judgment and opinion complained of in this case.

Which objection was then and there by the court sustained, to which ruling of the court the plaintiff duly excepted in open court.

272 By Counsel for the Plaintiff: Plaintiff now offers in evidence writ of execution in the case of Hill v. Blassingame and others, in case No. 741 of the District Court of Grady County, dated April 23rd, 1908, together with endorsements thereon and the officer's return.

(Identified by the reporter as exhibit M.)

By Counsel for the Defendant: Objected to if the court please for the reason that it is incompetent, irrelevant and immaterial and not proving or tending to prove any issue in this case and for the reason that it does not show such testimony was before the Secretary of the Interior and considered by him in rendering the judgment and opinion complained of in this case.

Which objection was by the court sustained, to which ruling of the court the defendant then and there duly saved an exception.

273 By Counsel for Plaintiff: Plaintiff offers in evidence if the court please the original complaint in ejectment and exhibits in the case of Hill v. Blassingame, same being case No. 741, in the District Court within and for Grady County, Oklahoma, to

which court it was transferred from the United States Court within and for the Southern District of the Indian Territory, same having been filed in the United States Court on Nov. 12th, 1902.

By Counsel for the Defendant: Same objection and for the reason that the testimony was not before or construed by the Secretary of the Interior in rendering the opinion complained of and for the further reason that it is incompetent, irrelevant and immaterial.

(Exhibit in question here identified by the reporter as Exhibit N.)

Which objection was by the court sustained, to which ruling of the court then and — the plaintiff duly saved an exception.

274 By Counsel for the plaintiff: Plaintiff now offers the instructions of the court in the case of Hill v. Blassingame and C. A. Reynolds in case No. 741, in the District Court of Grady County, filed in said court of the date of April 23, 1908.

By Counsel for the Defendant: Same objection if the court please.

Which objection was then and there by the court sustained, to which ruling of the court the plaintiff duly saved an exception.

(The instructions in question sought to be introduced by the plaintiff are identified by the reporter as Exhibit O.)

(Plaintiff closes.)

The above and foregoing constitutes all of the evidence and testimony introduced, admitted and offered or tendered in said cause by either of the parties and is all of the evidence in said cause.

And thereupon, to wit, on the 15th day of March, A. D. 1913, there was entered in said cause, and filed with the Clerk of the Superior Court in and for the said County and State aforesaid, an order allowing Receiver's fees; which said order, together with the endorsements thereon, is in words and figures, as follows, to wit:

276 And thereafter, to wit, on the 19th day of March, A. D. 1913, there was filed in said cause and filed with the Clerk of the Superior Court in and for the County and State aforesaid, a judgment; which said judgment, together with the endorsements thereon, is in words and figures as follows, to wit:

277 In the Superior Court within and for Grady County, State of Oklahoma.

No. 309.

HARRY F. HILL, a Minor, Suing by His Next Friend and Natural Guardian, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, a Minor, Defendant.

### *Judgment.*

Now, on this the 18th day of March, 1913, the same being a regular term of said Court this cause came on for further hearing, the

same having heretofore at a regular term of said Court been heard, argued and briefed, and the parties being present by their attorneys, and said court being fully advised in the premises finds the issues in favor of plaintiff and against the defendant, and the court finds that a patent was issued to the defendant for the following described lands, towit: North Half of the Southeast Quarter of Section 32, Township 7 North, Range 6 West, but finds that said lands were awarded to said defendant and a patent issued therefor through error of law and gross mistake of fact.

It is therefore ordered, adjudged and decreed by the Court that said defendant hold in trust for the plaintiff the title to said lands.

It is further ordered, adjudged and decreed by the Court that plaintiff's claim and title to said land is valid and perfect, and that said defendant has no right or title therein, and that the same is hereby forever settled and quieted in the plaintiff as against all claims or demands by said defendant and those claiming or to claim under him, and that the defendant shall execute a good and sufficient warranty deed conveying said lands to plaintiff, otherwise, said title shall pass by operation of law.

278 And it is further ordered, decreed and adjudged that said defendant and those claiming through, by or under him be and are hereby perpetually enjoined and forbidden to claim any right, title, interest and estate in or to said premises by virtue of said patent, hostile or adverse to the title of the plaintiff herein, and said defendant and those claiming under him are hereby perpetually forbidden and enjoined from commencing any suit to disturb the plaintiff in his title to said lands, from setting up or claiming any interest adverse to the title of the plaintiff herein, and from disturbing plaintiff in the enjoyment of said described premises. And it is further adjudged that plaintiff have and recover his costs from defendant. To which ruling and judgment the defendant in open Court excepted and exceptions allowed.

WILL LINN, *Judge.*

Endorsed: Filed M'ch 19, 1913. W. L. Melton, Clerk of Superior Court.

279 And thereafter, towit, on the 18th day of March, A. D. 1913, there was filed in said cause, with the Clerk of the Superior Court in and for the said County and State aforesaid, a Motion for New Trial, which said Motion for New Trial, together with all of the endorsements thereon, is in words and figures, as follows, towit:

280 In the Superior Court in and for Grady County, Oklahoma

399.

HARRY HILL, by His Next Friend, Dave Hill, Plaintiff,  
vs.  
FRANK REYNOLDS and HARRY HAMMERLY, Guardian ad Litem,  
Defendants.

*Motion for New Trial.*

Comes now the defendants in the above entitled cause and file this motion for a new trial in said cause, and for such motion aver:

First. That the decision and judgment of the court is contrary to law.

Second. That the decision and judgment of the Court is contrary to the evidence.

Third. Error of law occurring during the trial of said cause, excepted to at the time by the defendants.

Fourth. That the court erred in rendering judgment in favor of the plaintiff herein and against the defendants.

Fifth. The court erred in the admission of certain testimony over the objection of defendants, and considering the same on the trial and in deciding said cause.

Wherefore, defendants pray that the court grant them a new trial herein, in order that justice may be done them.

F. E. RIDDLE,  
*Attorneys for Defendants.*

Endorsed: Filed M'ch 18, 1913. W. L. Melton, Clerk of Superior Court.

281 And thereafter, towit, on the 18th day of March, A. D., 1913, there was entered in said cause, and filed with the Clerk of the Superior Court in and for said Court and State aforesaid, an order overruling Motion for New Trial; which said Order, together with all of the endorsements thereon, is in words and figures as follows, towit:

282 In the Superior Court in and for Grady County, Oklahoma.

#399.

HARRY HILL, by His Next Friend, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS and HARRY HAMMERLY, Guardian ad Litem,  
Defendants.

*Order and Judgment Overruling Motion for New Trial and Extending Time for Case Made.*

Now on this the 18th day of March, A. D., 1913, being one of the regular days of the March term of the Superior Court within and for Grady County, Oklahoma, the motion for a new trial of defendants herein —, and after consideration thereof and arguments of counsel and the court being well and sufficiently advised in the premises, finds that said motion is not well taken and should in all things be overruled and denied;

It is therefore considered, ordered and adjudged by the court that said motion for a new trial filed herein by said defendants be and the same is hereby overruled and denied; to which ruling and judgment of the court the defendants in open court duly excepted.

And be it remembered that on said day and date and immediately after the overruling of said motion for a new trial in open court said defendants herein gave notice of prosecuting proceedings to the Supreme Court of the State of Oklahoma and filed motion herein praying for an extension of time, and the court finds that said motion is well taken and there is good ground shown for an extension of time, and finds that said motion should be granted and time extended within which to prepare and serve case made herein;

It is therefore considered, ordered and adjudged by the court that said defendants herein are given and are hereby allowed an extension of one hundred and fifty days from this date within which to prepare and serve case made herein upon the plaintiffs, and said plaintiffs allowed ten (10) days for suggestion of amendments, and said case made to be allowed and approved upon five (5) days notice of either party.

WILL LINN,

*Judge Superior Court.*

Endorsed: Filed M'ch 18, 1913. W. L. Melton, Clerk of Superior Court.

284 And thereupon, towit, on the 18th day of March, A. D., 1913, there was filed in the above entitled cause, with the said Clerk of the Superior Court within and for the County and State aforesaid, a Motion for extension of time; which said motion

together with all of the endorsements thereon, is in words and figures as follows, to wit:

285 In the Superior Court in and for Grady County, Oklahoma.

399.

HARRY HILL, Plaintiff,

VS.

FRANK REYNOLDS and HARRY HAMMERLY, Guardian ad Litem,  
Defendants.

*Motion for Extension of Time.*

Comes now the defendants in the above entitled and numbered cause and file this their motion for an extension of time to prepare and serve case made herein, and for such motion aver that it will be impossible for the court reporter and stenographer or the clerk thereof to prepare the record and case made in this case in behalf of the defendants within the time allowed by law, and by reason thereof it is necessary that an extension of time be granted to defendants herein in order that their rights may be saved and protested and said record and case made may be prepared for service preparatory to filing in the Supreme Court:

Wherefore, defendants pray that they have an extension of time of five months from the time allowed by law in which to prepare and serve case made herein.

F. E. RIDDLE,

*Attorney for Defendants.*

Endorsed: Filed M'ch 18, 1913. W. L. Melton, Clerk of Superior Court.

286 In the Superior Court of Grady County, Oklahoma.

No. 399.

HARRY F. HILL, by His Next Friend, Dave Hill, Plaintiff,

VS.

FRANK REYNOLDS, Defendant.

The within and foregoing Case Made and record contains a full, true, complete and correct copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had, all the evidence offered and introduced, all the orders and rulings made and exceptions taken and allowed and all of the records upon which the judgment and journal entry in said cause were made, and the same is a full, true, complete and correct Case Made.

287 In the Superior Court in and for Grady County, Oklahoma.

No. 399.

HARRY F. HILL, by and through His Next Frined, Dave Hill,  
Plaintiff,

vs.

FRANK REYNOLDS and HARRY HAMMERLY, His Guardian ad Litem,  
Defendant.

No. 400.

LOUIS JAMES, by His Legal Guardian, Dave Hill, Plaintiff,

vs.

ETHEL A. REYNOLDS, and Her Guardian ad Litem, Harry Ham-  
merly, Defendant.

No. 401.

J. B. HILL, by and Through His Next Friend, Dave Hill, Plaintiff,

vs.

WILLIE REYNOLDS, Defendant.

No. 402.

LEWIS JAMES, by His Legal Guardian, Dave Hill, Plaintiff,

vs.

SELDON REYNOLDS, and His Guardian ad Litem, Harry Hammerly,  
Defendant.

No. 403.

J. B. HILL, by and Through His Next Friend, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS and His Guardian ad Litem, Defendant.

*Agreement.*

It is hereby agreed and stipulated between counsel for the plain-  
tiffs in each of the above styled and numbered causes, and counsel  
for the defendants in each of said causes, that the pleadings and  
issues involved in each of said causes of action are the same with the  
exception of the parties and description of the land involved in each  
of said causes; the patents in each case and the assignment  
288 of error No. 6 in plaintiff's petition in case No. 399, which  
said assignment No. 6 is only involved in said cause No. 399.

It is further agreed that all of the testimony and evidence intro-  
duced and judgments and orders and rulings of the court in cause  
No. 399 shall apply to each and all of said causes with the exception  
of the assignment No. 6 in cause No. 399, the same being limited to  
cause No. 399.



It is therefore agreed by and between counsel for the plaintiffs in each of said causes, and counsel for defendants in each of said causes, that all of the testimony and evidence introduced in the trial court affecting each and all of said causes shall be contained in one record and case made prepared for the Supreme Court, which said record and case made may be filed in cause No. 399, and that the Supreme Court may consider said testimony and evidence and rulings of the court in respect thereto, together with the objections, exceptions, orders and rulings made thereon in each of said causes and apply same to each of said causes so filed in the Supreme Court, and any judgment or decision rendered in the Supreme Court in Cause No. 399 shall be rendered in each of the other numbered causes herein mentioned and named, except such judgment or order as may be made on assignment No. 6, involving eighty acres of land, which is applicable *along* to cause No. 399.

It is further agreed that service of case made, or copy thereof in case No. 399 shall be deemed and considered as service of case made in each of said causes and the same may be filed in the supreme Court as the case made in each of said causes, respectively as styled and numbered herein.

289 : (Signed)

F. E. RIDDLE,  
*Attorney for Defendants.*  
BOND & MELTON,  
*Attorney- for Plaintiffs.*

(Endorsed:) Filed March 31, 1913. W. L. Melton, Clerk Superior Court.

290 STATE OF OKLAHOMA,  
*County of Beaver, ss:*

Personally appeared before me, the undersigned authority, G. U. McKinney, who on oath states that for the last two years past and up until March 22, 1913, he was the official reporter for the Superior Court of Grady County, Oklahoma; that as such reporter he reported the cases and took down in shorthand the evidence and all proceedings at the trial thereof in the following cases pending in said Superior Court of Grady County, Oklahoma, styled and numbered as follows, to-wit:

- No. 399, H. F. Hill vs. Frank Reynolds
- No. 400, Lewis James vs. Ethel A. Reynolds
- No. 401, J. B. Hill vs. Willie Reynolds
- No. 402, Lewis James vs. Seldon Reynolds
- No. 403, J. B. Hill vs. Frank Reynolds

and which said causes were decided by said court on the 18th day of March, A. D. 1913.

Affiant further states that in reporting said causes he acted as such official stenographer for said Superior Court, having duly and regularly taken the oath of office.

Affiant further states that since said court was abolished and his office thereby abolished he has truly and correctly transcribed from

shorthand all of said proceedings taken down in shorthand by him, and has truly and correctly transcribed the record and proceedings in said causes, and that the above and foregoing Case Made contains a true, correct and perfect transcript of all the proceedings of said numbered and styled causes, including all testimony and evidence admitted in evidence in said causes, the record of the tender and offer of all testimony and the rulings and objections made thereto, all orders and rulings of the court made in said causes; and  
 291 a true and perfect record of all the proceedings had in said causes, save and except such testimony and evidence as was tendered and offered which was excluded by the Court in the trial of said causes; and further affiant saith not.

G. U. McKINNEY.

Subscribed and sworn to before me this 3 day of April, A. D., 1913.

[SEAL.]

M. A. CLARK,

*Notary Public, Beaver County, State of Oklahoma.*

My Commission expires January 10th, 1917.

292 In the Superior Court of Grady County, Oklahoma.

No. 399.

HARRY F. HILL, by His Next Friend, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, Defendant.

*Reporter's Certificate.*

I, G. U. McKinney, do hereby certify that I was, at the time of the trial of the above entitled cause in the Superior Court in and for Grady County, Oklahoma, the duly appointed, qualified and acting Court Reporter for said Court; and that I was present and made a full, true, complete and correct shorthand report and record of all the proceedings had upon the trial of said cause at said time, and that the within and foregoing transcript and record is a full, true, complete and correct transcript and report of all the oral testimony offered in evidence, the exhibits introduced, the pleadings read, the objections of counsel to the introduction of any testimony, the rulings of the Court thereon, the exceptions taken, and all other proceedings had upon the trial of said cause; and I do hereby so certify.

Given under my hand in the City of Beaver, Oklahoma, this 3rd day of April, 1913.

G. U. McKINNEY,  
*Official Court Reporter.*

Subscribed and sworn to before me this 3rd day of April, A. D. 1913.

[SEAL.]

M. A. CLARK,

*Notary Public in and for Beaver County, Oklahoma.*

My Commission expires January 10th, 1917.

293 In the Superior Court in and for Grady County, Oklahoma.  
No. 399.

HARRY F. HILL, by and Through His Next Friend, Dave Hill,  
Plaintiff,  
VS.  
FRANK REYNOLDS and HARRY HAMMERLY, His Guardian ad Litem,  
Defendants.

No. 400.

LOUIS JAMES, by His Legal Guardian, Dave Hill, Plaintiff,  
VS.  
ETHEL A. REYNOLDS and Her Guardian ad Litem, Harry Hammerly,  
Defendants.

No. 401.

J. B. HILL, by and Through His Next Friend, Dave Hill, Plaintiff,  
VS.  
WILLIE REYNOLDS, Defendant.

No. 402.

LEWIS JAMES, by His Legal Guardian, Dave Hill, Plaintiff,  
VS.  
SELDON REYNOLDS and His Guardian ad Litem, Harry Hammerly,  
Defendant.

No. 403.

J. B. HILL, by and Through His Next Friend, Dave Hill, Plaintiff,  
VS.  
FRANK REYNOLDS and His Guardian ad Litem, Defendant.

To the respective plaintiffs in the above-numbered and entitled causes and their Attorneys of Record, Stuart, Cruce & Gilbert, and Bond & Melton:

We, the undersigned attorneys for the defendants in the above respectively numbered and styled causes, hereby tender you and serve upon you a true and correct case made in each of said causes, in accordance with the stipulation made herein, the same including all of the testimony and evidence introduced in the trial of said cause, together with a record of all testimony offered and tendered and objections thereto, and the rulings of the court thereon and exceptions taken, together with a true copy of all pleadings of every kind filed in said cause and exhibits attached thereto, including all orders and judgments of the court made, en-

tered and rendered in said cause, and that the same contains and includes a full and true record of all the proceedings had in said cause.

(Signed)

F. E. RIDDLE,  
*Attorneys for Defendants.*  
HARRY HAMMERLY,  
*Gdn. ad Litem.*

Dated this Apr. 5th, 1913.

295 In the Superior Court of Grady County, Oklahoma.

No. 399.

HARRY F. HILL, by His Next Friend, Dave Hill, Plaintiff,  
vs.  
FRANK REYNOLDS, Defendant.

*Clerk's Certificate.*

I, W. L. Melton, Clerk of the Superior Court of Grady County, State of Oklahoma, do hereby certify that the within and foregoing Case Made and record contains a full, true, complete and correct transcript and copy of all the records in the above entitled cause as shown by the files and records in my office in said Grady County, and the same is a full, true, complete and correct transcript and copy of all pleadings, rulings, orders and judgments of the Court and of the finding of the Court in said cause.

Witness my hand and the seal of said Court this — day of 18th, A. D. 1913.

[SEAL.]

W. L. MELTON,  
*Clerk of the Superior Court, Grady County, Oklahoma.*

296 In the Superior Court in and for Grady County, Oklahoma.

No. 399.

HARRY F. HILL, by His Next Friend, Dave Hill, Plaintiff,  
vs.  
FRANK REYNOLDS, Defendant.

*Acceptance of Service of Case Made.*

STATE OF OKLAHOMA,  
*County of Grady, ss:*

We, the undersigned Attorney for the Plaintiff in the foregoing suit, certify that the foregoing Case Made was duly served on us this 5th day of April, A. D. 1913.

BOND & MELTON,  
*Attorney- for Plaintiff.*

The foregoing case is correct, except — (Here suggest amendments.)

297 In the Superior Court of Grady County, Oklahoma.

No. 399.

HARRY F. HILL, a Minor, Suing by and Thru His Next Friend &  
Natural G'd'n, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS and His G'd'n ad Litem, Harry Hammerly,  
Defendants.

*Order Settling Case Made.*

I, Will Linn, do hereby certify that I was formerly Judge of the Superior Court of Grady County Oklahoma and that I was the judge presiding over said court that tried and rendered judgment in the above styled and numbered cause. I further certify that on this 18th, day of April 1913 the within and foregoing case made was presented to me for settlement and allowance and that the plaintiff above was present by his attorneys, Bond and Melton and that the defendant was present by his attorney F. E. Riddle and that the guardian ad litem was present in person. I further certify that the plaintiff above suggested certain amendments to said case made as follows towit: That certain certified copies of government plats be made a part of the case made, same being suggestion of amendment No. 1. That same was agreed to by the parties and was made a part hereof and appears in this case made at page 149. That suggested amendment No. 2, same being to include an original complaint in ejectment was disallowed for the reason the same was offered in evidence by the plaintiff above and by the court excluded as testimony. The deed executed by James H. Tuttle referred to in said suggestion appearing herein at page No. 218. That suggested amendment No. 3 was disallowed, same being an amended complaint in ejectment, instructions of the court therein, judgment, execution and writ of mandate in said cause. All of same were disallowed for the reason the same was offered in evidence by the plaintiff above and excluded by the Court as incompetent testimony.

298 That the above is all the suggestions of amendments made by any of the parties hereto and the rulings on said suggestions of amendments.

I further certify that the foregoing case made and record- and the amendments thereto have been served within the time provided by law and within the time allowed by the order of the court and that the same was duly submitted to me for signing and settlement as required by law and within the time provided by law and the order of the court by the counsel of the parties to said cause; that the foregoing made as set forth above and as corrected by me is a true, correct and complete case made and record in said cause and contains a true, correct and complete statement of all the pleadings, motions, orders, testimony and evidence, the objections thereto and rulings thereon and exceptions taken and all the proceedings had

in said cause, together with the judgments rendered therein and all objections and exceptions thereto and by virtue of the authority of law invested in me, I hereby settle, allow, approve certify and sign said case made as a true, complete and correct case made of the above cause and hereby order the clerk of the Superior Court to attest the same with the seal of said court and file the same of record in said cause No. 399 and also in causes No. 400, 401, 402, and 403, as per agreement of parties.

In testimony whereof, I hereunto set my hand this 18 day of April 1913 and order the seal of the court attached accordingly.

[SEAL.]

WILL LINN,

*Trial Judge of Said Cause.*

Attest:

W. L. MELTON,

*Clerk Superior Court.*

299 In the Superior Court in and for Grady County, Oklahoma.

No. 399.

J. B. HILL, Plaintiff,

vs.

FRANK REYNOLDS, Defendant.

*Stipulation.*

It is hereby agreed between counsel for plaintiffs in the above entitled and numbered cause and in causes Numbers 400, 401, 402, and 403, and attorneys for defendants in each of said causes, and Harry Hammerly, Guardian Ad Litem for the minor defendants in said causes, that the Honorable Will Linn having settled and approved said case made as presented and amended & corrected, we hereby waive further notice or time and agree that said case made may be presented to the Hon. J. T. Johnson, Judge of the District Court of this District, for approval and allowance at once, and same may be settled in our absence.

BOND & MELTON,

*Attorneys for Plaintiff.*

F. E. RIDDLE,

*Attorney for Defendants.*

HARRY HAMMERLY,

*Guardian ad Litem.*

300 In the District Court in and for Grady County, Oklahoma.

No. 399.

HARRY F. HILL, by His Next Friend, Dave Hill, Plaintiff,

vs.

FRANK REYNOLDS, Defendant.

*Judge's Certificate.*

This is to Certify, That the within and foregoing Case Made and the amendments thereto have been duly served in due time, and the amendments thereto duly suggested, and the same duly submitted to me for settlement and signing, as required by law, by the parties to said cause; that the same as above set forth, is true and correct, and contains a true and correct statement of all the pleadings, motions, orders, evidence, findings, proceedings and judgments had in such cause; and I hereby settle, allow, certify and sign the same as true and correct, and hereby order that the Clerk of the District Court of Grady County, Oklahoma attest the same with the seal of said Court, and file the same of record.

Witness my hand in chambers this 21st day of April, A. D., 1913.

J. T. JOHNSON,

*Judge District Court.*

Attest:

[SEAL.] S. L. NEWMAN,  
*Clerk District Court.*

301 Filed April 19, 1913.

[SEAL.]

W. L. MELTON

*Clerk of Superior Court.*

302 And afterward, at the September, 1913, Term of said Supreme Court, on the 14th day of October, 1913, the following proceedings was had in said cause, to wit:

5135.

FRANK REYNOLDS, Plaintiff in Error,

vs.

HARRY F. HILL, Defendant in Error.

And now on this day it is ordered by the court that the motion to advance filed herein be, and the same is hereby sustained, and the cause is set for January, 1914, term of court.

303 And afterward, at the January, 1914, Term of said Supreme Court, on the 13th day of January, 1914, the following proceeding was had in said cause, to wit:



5135.

FRANK REYNOLDS, etc., Plaintiff in Error,

vs.

HARRY F. HILL, etc., Defendant in Error.

And now on this day it is ordered by the court that the above cause be and the same is hereby continued for the term, to be set for oral argument at the April, 1914, term of court.

304 And afterward, at the April, 1914, Term of said Court, on the 15th day of April, 1914, the following proceeding was had in said cause, to wit:

5135.

FRANK REYNOLDS, Plaintiff in Error,

vs.

HARRY F. HILL, etc., Defendant in Error.

And now on this day it is ordered by the court that the above cause be continued till April 28, 1914, and defendant in error allowed until that time to file brief.

305 In the Supreme Court of the State of Oklahoma.

No-. 5135-5136, 5137-5138-5139.

FRANK REYNOLDS and HARRY HAMMERLY, His Guardian ad Litem,  
Defendant Below, Plaintiff in Error,

vs.

HARRY HILL, a Minor, Suing by His Next Friend and Natural  
Guardian, Dave Hill, Plaintiff Below, Defendant in Error.

Filed Apr. 25, 1914, W. H. L. Campbell, Clerk.

*Motion to Correct Case-made.*

Now comes the above named defendant in error, by C. B. Stuart and Bond & Melton, his attorneys, and respectfully shows to the court, that, it appears from pages 240 to 244 inclusive of the record, that the plaintiff offered in evidence, certain documents, being certain of the court files in case No. 741 in the United States Court within and for the Southern District of the Indian Territory at Chickasha; afterwards transferred to the District Court of Grady County, Oklahoma, entitled, Dave Hill v. J. W. Blassengame and C. A. Reynolds; said documents being the Amended Complaint, identified as Exhibit "K," Judgment of the Court, identified as Exhibit "L," Execution, identified as Exhibit "M," the Original Complaint, identified as Exhibit "N," and the court's instructions to the

jury, identified as Exhibit "O." That objection was made to the introduction of any of said documents in evidence by the defendant's attorney, and this objection was sustained by the court, to which action of the court, the plaintiff at the time, duly excepted. That such exhibits, although a matter of record in the court below, were, by the stenographer, omitted from the record, and that such fact was not known to this defendant until a short time ago.

306 Defendant further represents, that it has been stipulated and agreed, between the attorneys for the plaintiff in error and the attorneys for the defendant in error, in the above entitled cause, that the attached copies are true and correct copies of such documents.

Wherefore, defendant in error respectfully prays the court, for an order, allowing such corrections to be made and filed, in order that the same may be considered as a part of the case-made herein.

BOND & MELTON,  
C. B. STUART,

*Attorneys for Defendant in Error.*

307 In the Supreme Court of the State of Oklahoma.

No. 5135-5136-5137-5138-5139.

FRANK REYNOLDS and HARRY HAMMERLY, His Guardian ad Litem,  
Defendant Below, Plaintiff in Error,

vs.

HARRY HILL, a Minor, Suing by His Next Friend and Natural  
Guardian, Dave Hill, Plaintiff Below, Defendant in Error.

*Stipulation.*

It is hereby stipulated and agreed, by and between the Honorable F. E. Riddle, attorney for the plaintiff in error, and C. B. Stuart and Bond & Melton, attorneys for defendant in error, that the documents hereto attached and identified as Exhibits "K," "L," "M," "N," and "O" respectively; same being the Amended Complaint, Judgment of the Court, Execution, Original Complaint, and the Court's Instructions to the Jury in case No. 741, Dave Hill v. J. W. Blassengame and C. A. Reynolds, in the United States Court within and for the Southern District of the Indian Territory at Chickasha; and afterwards transferred to the District Court of Grady County, Oklahoma, which said documents were offered in evidence at the trial of these cases in the court below, to the introduction of which, on the part of the plaintiff, an objection of the defendant was sustained by the court, and which documents, it appears were not placed in the case-made by the stenographer upon objection of plaintiff in error which objection was by the court sustained, are true and correct copies of the original documents of record in the lower court. And the said attorney for the plaintiff in error, hereby acknowledges service of

notice of motion to amend and correct case made by attaching thereto, such documents herein above referred to.

F. E. RIDDLE,

*Attorneys for Plaintiff in Error.*

C. B. STUART,

*Attorneys for Defendant in Error.*

308

Ex. "K"

In the United States Court Within and for the Southern District of the Indian Territory, at Chickasha.

No. 741.

DAVE HILL, Plaintiff,

vs.

J. W. BLASINGAME and C. A. REYNOLDS, Defendants.

*Amended Complaint.*

Leave of court, having been granted, the plaintiff Dave Hill, files this his Amended Complaint, and alleges:

1st. That at the time the original complaint was filed in this cause, the plaintiff was the owner of the improvements on the lands described in such complaint, and held possession thereof by reason of his Indian Citizenship, and was entitled to the possession of said land, for the purpose of selecting allotments thereof for himself and his family; that this plaintiff is the father and natural guardian of J. B. Hill and Harry F. Hill, both minors, and that he is the legal guardian of Lewis James, a minor, that since the original complaint was filed in this cause, the plaintiff has selected from the lands sued for the northeast quarter of section 32, township 7, north, range 6 west, in the Chickasaw Nation, Indian Territory, as the allotment of J. B. Hill, and the north half of the southeast quarter of section 32, as a portion of the allotment of Harry F. Hill; and the west half of the southwest quarter, and the north half of the northeast quarter of the northwest quarter, and the west half of the northwest-quarter of section 33, in township 7, north, range 6 west, as the allotment of Lewis James; that such allotment selections have been confirmed by the Department of the Interior, and patents issued to J. B. Hill, Harry F. Hill, a and Lewis James, conveying such land; copies of which patents are hereto attached, marked "Exhibits A, B, and C," and made a part of this amended complaint.

309 2nd. Plaintiff alleges that said minors, J. B. Hill, Harry F. Hill, and Lewis James, are the owners and entitled to the immediate possession of the lands herein described; that said plaintiff is entitled to recover of the defendants herein, the rents upon said lands before and since the same were selected in allotments by such minors; that the defendant Reynolds occupies said lands and has received the rents therefrom; that the reasonable value of said

rents is Eight hundred dollars (\$800.00) a year, or four thousand dollars (\$4,000.00) in the five years which the defendant Reynolds has occupied and used said lands.

3rd. Plaintiff further alleges that at the time of the institution of this suit, he was entitled to the possession of the land described herein, for the purpose of allotment selections for himself and family; that his minor children J. B. Hill and Harry F. Hill, and his ward, Lewis James, have been awarded allotment selections from said land as described in the patents hereto attached; that by reason of such allotment selections, said minors are entitled to the possession of said lands since such allotment selections were made, and confirmed, and that the plaintiff is entitled to rents upon said lands before and since the time such allotment selections were made; and plaintiff asks that he be permitted to continue to prosecute this action in his own name, as the legal guardian of Lewis James, and as the next friend of J. B. Hill and Harry F. Hill, minors, in their behalf and for their benefit, as their interests may appear.

Wherefore plaintiff prays judgment for the possession of said lands, and for damages in the sum of \$4,000.00 and all costs.

\_\_\_\_\_,  
\_\_\_\_\_,  
*Attorneys for Plaintiff.*

Dave Hill, on oath states that he has read the foregoing amended complaint, and that the facts set forth therein are true.

DAVE HILL.

Subscribed and sworn to before me this the 13th day of November, 1907.

FREDA ANDREEN,  
*Notary Public.*

310

*Allotment Patent No. 16752.*

Choctaw by Blood.

Roll No. 13127.

Date of Certificate, March 21, 1905.

The Choctaw and Chickasaw Nations.

Indian Territory.

To all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved July 1, 1902, (32 Stat. 641) and ratified by the citizens of the Choctaw and Chickasaw Nations, September 25, 1902, it was provided that there should be allotted, by the Commission to the Five Civilized Tribes, to each citizen of the Choctaw and Chickasaw Nations, land equal in value

to three hundred and twenty acres of the average allottable lands of the Choctaw and Chickasaw Nations; and,

Whereas, it was provided by said Act of Congress that each member of said tribes, shall, at the time of the selection of his allotment, designate, or have selected and designated for him from his allotment, land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue; and

Whereas, the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of J. B. Hill, a citizen of the Choctaw Nation, as an allotment, exclusive of land equal in value to — hundred and sixty acres of the average allottable lands of the Choctaw and Chickasaw Nations, selected as a homestead, as aforesaid;

Now, therefore, we, the undersigned, the Principal Chief of the Choctaw Nations and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the twenty-ninth section of the Act of Congress of the United States, approved June 28, 1898 (30 Stat. 495) have granted and conveyed and by these presents do grant and convey unto the said J. B. Hill, all right, title, and interest of the Choctaw and Chickasaw Nations and of all other citizens of said Nations, in and to the following described land, viz;

The south half of the southeast quarter of the northeast quarter, and the southwest quarter of the northeast quarter of section thirty-two (32) township seven (7) north, and range six (6) west, and the north half of the northwest quarter of the northwest quarter, less three and 37/100 (3.37) acres occupied as right of way, by the Kiowa, Chickasha and Fort Smith Railway, of section nine (9), and the southeast quarter of the southeast quarter of the northeast quarter of section five (5) township six (6) north and range six (6) west, (Chickasaw Nation) of the Indian Base and Meridian in Indian Territory, containing eighty-six and 63/100 (86.63) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the provisions of the Act of Congress approved July 1, 1902 (32 Stat. 641).

In witness whereof, we, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, have hereunto set our hands and caused the great seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, April 18, 1906.

(Signed)

GREEN McCURTAIN,  
*Principal Chief of the Choctaw Nation.*

Date, April 13, 1906.

(Signed)

DOUGLASS JOHNSTON,  
*Governor of the Chickasaw Nation.*

Department of the Interior.

Approved June 28, 1906.

(Signed) ETHAN A. HITCHCOCK, *Secretary,*

By OLIVER A. PHELPS, *Clerk.*

Choctaw by Blood.

Roll No., 13127.

Date of Certificate, August 13, 1903.

The Choctaw and Chickasaw Nations.

Indian Territory.

To all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved July 1, 1902, (32 Stat. 641) and ratified by the Citizens of the Choctaw and Chickasaw Nations September 25, 1902, it was provided that there should be allotted, by the Commission to the Five Civilized Tribes to each Citizen of the Choctaw and Chickasaw Nations, land equal in value to three hundred and twenty acres of the average allottable lands of the Choctaw and Chickasaw Nations, and

Whereas, it was provided, by said Act of Congress that each member of said tribes shall, at the time of the selection of his allotment, designate, or have selected and designated for him, from his allotment, land equal in value to one hundred and sixty acres of the average allottable lands of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue; and,

Whereas, the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of J. B. Hill, a citizen of the Choctaw Nation, as a homestead:

Now, therefore, we, the undersigned, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation by virtue of the power and authority vested in us by the twenty-ninth section of the Act of Congress, approved June 28, 1898, (30 Stat. 495) have granted and conveyed, and by these presents do grant and convey unto the said J. B. Hill, all right, title and interest of the Choctaw and Chickasaw Nations, and of all other citizens of said Nations, in and to the following described land, viz;

The north half of the southeast quarter of the northeast quarter, and the north half of the northeast quarter of section thirty-two (32) township seven (7) north and range six (6) West (Chickasaw Nation) of the Indian Base and Meridian, in Indian Territory, containing one hundred acres (100) more or less, as the case may be, according to the United States survey thereof, subject however to the conditions provided by the Act of Congress approved July 1, 1902 (32 Stat. 641) pertaining to allotted homesteads.

In witness whereof, we, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, have hereunto set our

hands and caused the great seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, April 18, 1906.

(Signed)

GREEN McCURTAIN,  
*Principal Chief of the Choctaw Nation.*

Date, April 23, 1906.

DOUGLASS JOHNSTON,  
*Governor of the Chickasaw Nation.*

Department of the Interior.

Approved June 11, 1906.

(Signed) ETHAN A. HITCHCOCK, *Sec.*,  
By OLIVER A. PHELPS, *Clerk.*

312

*Homestead Patent No. 18632.*

Choctaw by Blood.

Roll No. 13128.

Date of Certificate, August 13, 1903.

The Choctaw and Chickasaw Nations.

Indian Territory.

To all to whom these presents shall come, Greeting:

Whereas, By the Act of Congress, approved July 1, 1902, (32 Stat. 641) and ratified by the citizens of the Choctaw and Chickasaw Nations, September 25, 1902, it was provided that there should be allotted, by the Commission to the Five Civilized Tribes, to each Citizen of the Choctaw and Chickasaw Nations land equal in value to three hundred and twenty acres of the average allottable lands of the Choctaw and Chickasaw Nations, and

Whereas, It was provided by said Act of Congress, that each member of said tribes shall, at the time of the selection of his allotment, designate, or have selected and designated for him, from his allotment, land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue, and

Whereas, the said Commission to the Five Civilized Tribes, has certified that the land hereinafter described has been selected by or on behalf of Harry F. Hill, a citizen of the Choctaw Nation, as a homestead:

Now, therefore, we, the undersigned, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the twenty-



ninth section of the Act of Congress of the United States, approved June 28, 1898 (30 Stat. 495), have granted and conveyed and by these presents do grant and convey unto the said Harry F. Hill, all right, title, and interest of the Choctaw and Chickasaw Nations, and of all other citizens of said Nations, in and to the following described lands, viz;

The north half of the southeast quarter of the southeast quarter, and the north half of the southeast quarter of section thirty-two (32) township seven (7) north range six (6) west, (Chichasaw Nation of the Indian Base and Meridian, in Indian Territory, containing one hundred (100) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by the Act of Congress, approved July 1, 1902 (32 Stat. 641) pertaining to allotted homesteads.

In witness whereof, we, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, have hereunto set our hands and caused the great seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, April 18, 1906.

(Signed)

GREEN McCURTAIN,  
*Principal Chief of the Choctaw Nation.*

Date, April 23, 1906.

(Signed)

DOUGLASS JOHNSTON,  
*Governor of the Chickasaw Nation.*

Department of the Interior.

Approved June 11, 1906.

(Signed)

ETHAN A. HITCHCOCK, *Sec.*,  
By OLIVER A. PHELPS, *Clerk.*

313

*Homestead Patent, No. 20043*

Choctaw by Blood.

Roll No. 13896.

Date of Certificate, Aug. 13, 1903.

The Choctaw and Chickasaw Nations.

Indian Territory.

To all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved July 1, 1902, (32 Stat. 641) and ratified by the citizens of the Choctaw and Chickasaw Nations September 25, 1902, it was provided that there should be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Choctaw and Chickasaw Nations, land equal in value

to three hundred and twenty acres of the average allottable lands of the Choctaw and Chickasaw Nations; and

Whereas, it was provided by said Act of Congress that each member of said tribes shall, at the time of the selection of his allotment, designate, or have selected and designated for him from his allotment, land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue; and

Whereas, the said Commission to the Five Civilized Tribes or its lawful successors has certified that the land hereinafter described has been selected by or on behalf of Lewis James, a citizen of the Choctaw Nation, as a homestead;

Now, therefore, we, the undersigned, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the twenty-ninth section of the Act of Congress of the United States, approved June 28th, 1898 (30 Stat. 495), have granted and conveyed, and by these presents do grant and convey unto the said Lewis James, all right, title and interest of the Choctaw and Chickasaw Nations, and of all other citizens of said Nations, in and to the following described land, viz;

The north half of the northeast quarter of the northwest quarter, and the west half of the northwest quarter of section thirty-three (33) township seven (7) north, and range six (6) west (Chickasaw Nation) of the Indian Base and Meridian, in Indian Territory, containing one hundred (100) acres, more or less, as the case may be, according to the United States survey thereof, subject however to the conditions provided by the Act of Congress approved July 1, 1902 (32 Stat. 641) pertaining to allotted homesteads.

In witness whereof, we, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, have hereunto set our hands, and caused the great seal of our respective Nations to be affixed at the dates hereinafter shown.

Date, Nov. 13, 1906.

(Signed)

GREEN McCURTAIN,  
*Principal Chief of the Choctaw Nation.*

Date, Dec. 7, 1906.

DOUGLASS JOHNSTON,  
*Governor of the Chickasaw Nation.*

Department of the Interior.

Approved Jan. 21, 1907.

(Signed)

ETHAN A. HITCHCOCK, *Sec.,*  
By OLIVER A. PHELPS.

314

*Allotment Patent No. 19340.*

Choctaw by Blood.

Roll No., 13896.

Date of Certificate, September 7, 1905.

The Choctaw and Chickasaw Nations.

Indian Territory.

To all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved July 1, 1902, (32 stat. 641) and ratified by the citizens of the Choctaw and Chickasaw Nations, September 25, 1902, it was provided that there should be allotted, by the Commission to the Five Civilized Tribes, to each citizen of the Choctaw and Chickasaw Nations land equal in value to three hundred and twenty acres of the average allottable lands of the Choctaw and Chickasaw Nations; and

Whereas, It was provided by said Act of Congress that each member of said tribes shall, at the time of the selection of his allotment, designate, or have selected and designated for him, from his allotment, land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw Nations, as nearly as may be, as a homestead, for which separate certificate and patent shall issue; and,

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Lewis James a citizen of the Choctaw Nation, as an allotment, exclusive of land equal in value to one hundred and sixty acres of the average allot-able lands of the Choctaw and Chickasaw Nations, selected as a homestead, as aforesaid,

Now, therefore, we, the undersigned, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, by virtue of the power and authority vested in us by the twenty-ninth section of the Act of Congress of the United States, approved June 28, 1898 (30 Stat. 495), have granted and conveyed, and by these presents do grant and convey unto the said Lewis James, all right, title and interest of the Choctaw and Chickasaw Nations, and of all other citizens of said Nations in and to the following described land viz.:

The west half of the southwest quarter of section thirty-three (33) township seven (7) north and range six (6) west, and the northeast quarter of the southwest quarter of the southeast quarter of section four (4) township six north, and range six (6) west (Chickasaw Nation) of the Indian Base and Meridian, in Indian Territory, containing ninety (90) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the

provisions of the Act of Congress approved July 1, 1902 (32 Stat. 641).

In witness whereof, We, the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation, have hereunto set our hands and caused the Great Seal of our respective Nations to be affixed at the dates hereinafter shown.

Date Nov. 13, 1906.

(Signed)

GREEN McCURTAIN,  
*Principal Chief of the Choctaw Nation.*

Date Dec. 7, 1906.

(Signed)

DOUGLASS JOHNSTON,  
*Governor of the Chickasaw Nation.*

Department of the Interior.

Approved, Jan. 23, 1907.

(Signed) ETHAN A. HITCHCOCK, *Sec.*,  
By OLIVER A. PHELPS, *Clerk.*

315 In the District Court Within and for the Fifteenth Judicial District, Grady County, State of Oklahoma.

No. 741.

DAVE HILL, Plaintiff,

vs.

J. W. BLASSINGAME and C. A. REYNOLDS, Defendants.

*Judgment.*

Now on this the 23rd day of April, 1908, the same being one of the regular days of the April, 1908, term of this court, this cause came on for trial, the plaintiff appearing in person and by counsel, and the defendant, C. A. Reynolds, appearing in person and by counsel, and the defendant J. W. Blassingame, failing to appear and defend in this action, issue being joined between the plaintiff and the defendant, C. A. Reynolds, both parties announcing ready for trial, a jury of twelve good and lawful men were duly empannelled and sworn to well and truly try the issues joined between the plaintiff and defendant and a true verdict render according to the law and evidence;

And the jury having heard the evidence presented by plaintiff and the defendant, C. A. Reynolds, on this day the court took a recess until 9 o'clock on April 24th, 1908, at which time the Court, being regularly opened, the jury, after hearing the instructions of the court and the argument of counsel, retired to consider their verdict, and afterwards, on the same day, returned into open court the following verdict;

" #741.

DAVE HILL, Plaintiff,

vs.

J. W. BLASSINGAME and C. A. REYNOLDS, Defendants.

*Verdict.*

We, the jury, duly selected, empannelled and sworn to try this case, find for the plaintiff for the possession of the N. E.  $\frac{1}{4}$  of section 32, except about 15 acres in the S. W. corner, and the W.  $\frac{1}{2}$  of the W.  $\frac{1}{2}$  of Section 33, except about 15 acres in the S. W. corner, and the N.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$  of Sec. 33, all in township 7 N. R. 6 W., in Grady county, Oklahoma, and for damages for the detention of such land in the sum of \$2200.00.

(Signed)

A. T. JOBE, *Foreman.*

It is therefore. considered, ordered, adjudged, and decreed by the court that the plaintiff, Dave Hill, have and recover of and from the defendants, J. W. Blassingame and C. A. Reynolds, the possession of the N. E.  $\frac{1}{4}$  of Section 32, except about 15 acres in the S. W. corner, and the W.  $\frac{1}{2}$  of the W.  $\frac{1}{2}$  of Section 33, except about 15 acres in the S. W. corner, and the N.  $\frac{1}{2}$  of the N. E.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$  of Sec. 311, all in T. 7 North, range 6 West, in Grady County, Oklahoma, and,

It is further considered, ordered, adjudged and decreed by the court that the plaintiff Dave Hill, have and recover of and from the defendant, C. A. Reynolds, the sum of \$2200.00, together with the costs in this case, taxed at \$——.

It is further considered, ordered, adjudged and decreed that the plaintiff have a Writ of Possession for said land, execution for his judgment and costs.

S. H. RUSSELL, *Judge.*

O. K.

F. E. R.

316

## Ex. M.

*Execution General Form.*

In the District Court of Grady County, Oklahoma.

No. 741.

DAVE HILL, Plaintiff,

vs.

J. W. BLASSINGAME and C. A. REYNOLDS, Defendants.

*Execution.*

State of Oklahoma to the Sheriff of Grady County, in said state,  
Greeting:

Whereas, Dave Hill on the 23rd day of April, A. D. 1908, obtained judgment in the District Court of Grady County, Oklahoma, sitting with-in and for the county of Grady against J. W. Blassingame, and C. A. Reynolds for the possession of the following described land in Grady County, Oklahoma, to wit: N. E.  $\frac{1}{4}$  of Sec. 32, except about 15 acres in S. W. corner, and W.  $\frac{1}{2}$  of Sec. 33, except about 15 acres in S. W. corner, and N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 33, of Twp. 7 N. R. 6 W., and judgment against C. A. Reynolds for \$2200.00, debt, for the further sum of \$—, and also for the sum of \$26.30 as costs in said behalf expended, with interest at the rate of 6 per cent. per annum from the 23d day of April A. D. 1908, and there has accrued one and 35/100 dollars costs and there was paid on the — day of —, A. D. 191—, the sum of Five Dollars, and

Whereas, There remains unpaid on such judgment, the sum of \$2200.00 together with \$26.30 costs, \$385.00 interest, and the accruing costs on this execution, less \$5.00 paid as aforesaid.

Now, therefore, you are hereby commanded to deliver to the plaintiff Dave Hill the possession of the following described land, to wit:

The N. E.  $\frac{1}{4}$  of the Sec. 32, except about 15 acres in S. W. corner, and W.  $\frac{1}{2}$  of W.  $\frac{1}{2}$  of Sec. 33, except about 15 acres in S. W. corner, and N.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 33, all in T. 7 N., Range 6 West in Grady County, Oklahoma, and you are commanded that of the goods and chattels of the said C. A. Reynolds, you cause the money above specified to be made; and for want of goods and chattels you cause the same to be made of the lands and tenements of said debtor. And make return of this Execution, with your certificate thereon, showing the manner in which you have executed the same, within sixty days from the date hereof.

In witness whereof, I have hereunto set my hand, and affixed the

seal of said court, at my office in the City of Chickasha, in said county, this 24th day of March, A. D. 1911.

[SEAL.]

J. R. CALLAHAM,  
Clerk of the District Court,  
By THOS. I. TAYLOR, Deputy.

Endorsed on back: Sheriff's Office, Grady County, Oklahoma. I received this writ on the 24th day of March, 1911, at 11 o'clock A. M. and according to the command of the within writ, I executed the same by delivering a copy thereof to C. A. Reynolds in person, and by going upon the land described therein, to wit: The N. E.  $\frac{1}{4}$  of Sec. 32, except about 15 acres in the S. W. corner and the W.  $\frac{1}{2}$  of the W.  $\frac{1}{2}$  of Sec. 33, except about 15 acres in the S. W. corner, and the north  $\frac{1}{2}$  of the N. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  of Sec. 33, all in Twp. 7 North, Range 6 West in Grady County, Oklahoma in company with Dave Hill, locating the boundaries of said land and delivering the possession thereof to the said Dave Hill, on the said 24th day of March, 1911. I found no personal property upon which to levy this writ. Jno. C. Lewis, Sheriff of Grady County, by J. A. Thompson, Deputy.

317 STATE OF OKLAHOMA,  
Grady County, ss:

I certify the above to be the times and manner of executing the within writ.

Dated this 24 day of March A. D. 1911.

*Sheriff's Return.*

Served execution by delivering copy to C. A. Reynolds and delivering possession of land described in writ to Dave Hill.

JNO. C. LEWIS, Sheriff,  
By J. A. THOMPSON, Dep.

318

Ex. N.

In the United States Court, within and for the Southern District of the Indian Territory, at Chickasha, October Term, 1903.

DAVE HILL, Plaintiff,  
vs.  
J. W. BLASSINGAME, Defendant.

*Complaint in Ejectment.*

Now comes the plaintiff Dave Hill and would show to the court that he is a member of the Choctaw Tribe or nation of Indians by intermarriage and a resident of the Southern District of the Indian Territory, that the defendant J. W. Blassingame is a resident



of the Southern District of the Indian Territory, a United States citizen and resides nearer Chickasha than any other place of holding U. S. Court within said District.

For cause of action plaintiff states that he is the owner and entitled to the immediate possession of the following described lands and premises, to wit: About five hundred and sixty acres of land, 320 of which is the west  $\frac{1}{2}$  of section 33, township seven north, range 6 west, about 160 acres being in the east  $\frac{1}{2}$  of section 32, township 7 north, range 6 west, and about 80 acres being in the south  $\frac{1}{2}$  of section 29, township 7 north, range 6 west, all in the Chickasaw Nation, Southern District of the Indian Territory, and being a part of what is known as the old Campbell place between East and West Bitter Creeks about — miles east of the City of Chickasha.

Second. That the defendant J. W. Blassingame unlawfully holds possession of said lands and premises and refuses to deliver the possession of the same to this plaintiff.

319 Third. That the above lands and premises were segregated from the public domain of the Chickasaw Nation, improved and placed in a state of cultivation by one Charles Campbell, a Chickasaw Indian by blood, in the year 18—, and was held and occupied by him until his death about the year 18—.

Fourth. That on the 18th day of November, 1902, James H. Tuttle, Guardian of John Campbell and Rex Campbell, minor heirs of Charles Campbell, deceased, Mont Campbell, Holmes Campbell, L. A. Campbell and Mrs. Sallie L. Minter (Campbell) heirs and representatives of the said Charles Campbell, deceased, all members of the Chickasaw Tribe or nation of Indians, by their quit claim deed of such date sold and transferred to this plaintiff all their right, title and interest in and to the lands and premises above described, which deed was duly executed and acknowledged by the aforesaid parties. A copy of which deed is attached hereto, made a part hereof and marked Exhibit "A."

Fifth. That the plaintiff is the father of four minor children, all members of the Choctaw Tribe or Nation of Indians by blood, that he has purchased and selected the lands herein mentioned for the purpose of taking the same as a portion of the allotment of the lands of the Choctaw and Chickasaw Nations, to which he and his minor children are entitled, and that he holds possession of no other lands in excess of the amount to which he and his minor children are entitled to allot.

Sixth. That the defendant is in the unlawful possession of said lands and premises, and refuses to deliver same to plaintiff, to plaintiff's damage in the sum of — Dollars.

Wherefore, plaintiff sues and asks that the defendant be cited to appear and answer herein, that on final hearing plaintiff have judgment for the recovery of said lands and premises and for the possession thereof, for his damage in the sum of — Dollars and for all his costs in this behalf expended.

(Signed)

BOND & MELTON,  
Plaintiff's Attorneys.

INDIAN TERRITORY,  
*Southern District:*

Personally appeared Dave Hill, who on oath states that he is plaintiff in the above cause, that he has read the foregoing complaint and that the facts set forth therein are true.

[SEAL.]

(Signed)

DAVE HILL.

Subscribed and sworn to before me this the — day of November, 1902.

(Signed)

J. T. RUST,  
*Notary Public.*

321

"EXHIBIT A."

Copy.

INDIAN TERRITORY,  
*Southern District:*

Know all men by these presents, that, we, James H. Tuttle, a Chickasaw Indian by intermarriage, of Minco, I. T., and legally and duly appointed and acting guardian of John Campbell and Rex Campbell, minor heirs of Charles L. Campbell, deceased, and Mrs. Sallie L. Campbell-Minter Mont Campbell, Holmes Campbell and L. S. Campbell, all citizens and members of the Chickasaw Tribe of Indians, for and in consideration of the sum of Sixteen hundred Dollars (\$1,600.00) to us in hand paid by Dave Hill, the receipt of which is hereby acknowledged, have this day, and do by these presents, bargain, sell, convey and quit-claim unto the said Dave Hill, his heirs, assigns and legal representatives, the following described lands and premises, to wit: About five hundred and sixty acres of land 320 acres being the west  $\frac{1}{2}$  of Section 33, T. 7 N. R. 6, W. and about one hundred and sixty acres of the east  $\frac{1}{2}$  of Section 32, T. 7, N. R. 6 W. and 80 acres being in S.  $\frac{1}{2}$  of Section 29, T. 7 N. R. 6 W., in the Chickasaw Nation, I. T. with all improvements thereon, and being known as a part of the Campbell farm.

To have and to hold unto the said Dave Hill, his heirs, assigns and legal representatives, forever, and we the said grantors, represent that we have a good right to sell and convey the quit claim and possessory right to the above described land unto the said Dave Hill, his heirs, assigns and legal representatives.

In testimony whereof we hereunto subscribe our names, this the 18th day of November, 1902.

322

(Signed)

JAMES H. TUTTLE.  
M. T. CAMPBELL.  
S. L. MINTER.  
L. A. CAMPBELL.  
HOLMES CAMPBELL.

[Subscribed and sworn to before me this the 24th d November, 1902.]\*

[\*Erased by four marks across the face.]

(Signed)

B. B. BAREFOOT.

(NOTE.)—These four pencil marks were drawn through the original copy as above.

(Signed)

J. M. GOULD,  
*Stenographer.*

323 INDIAN TERRITORY,  
*Southern District:*

Personally appeared before me the undersigned authority James H. Tuttle, Guardian of John Campbell and Rex Campbell, to me well known to be the person whose name is subscribed to the foregoing instrument as one of the parties grantor, and who acknowledged to me that he had executed the same for the purposes and considerations therein set forth and mentioned, and I do so certify.

[SEAL.]

(Signed)

J. A. STEWART,  
*Notary Public.*

My Com. expires 2-18-1905.

INDIAN TERRITORY,  
*Southern District:*

Personally appeared before me the undersigned authority Mrs. Sallie L. (Campbell) Minter, Mont Campbell, Holmes Campbell and L. A. Campbell, each personally well known to me to be the persons whose names are subscribed to the foregoing instrument as parties grantor therein, and each acknowledged to me that they had executed the foregoing instrument for the uses, purposes and considerations therein contained and set forth, and I do so certify.

[SEAL.]

(Signed)

B. B. BAREFOOT,  
*Notary Public.*

324 In the District Court of the Fifteenth Judicial District of the State of Oklahoma, in and for Grady County.

No. 741.

DAVE HILL, Plaintiff,

vs.

J. W. BLASSINGAME and C. A. REYNOLDS, Defendants.

*Court's Instructions to Jury.*

Gentlemen of the Jury on Nov. 25th 1902 the plaintiff Dave Hill, for himself and as natural guardian for J. B. Hill and Harry F. Hill who were both minors, and as legal guardian for Lewis James also minor, instituted in the United States Court for the Southern

District of the Indian Territory at Chickasha, against J. W. Blassingame to recover the possession of the lands in said complaint stated; and subsequent thereto his complaint was amended, to wit, on the 25th day of December, 1907 and filed in this court for himself and in behalf of his minor children and for his ward Lewis James as hereinbefore stated, against J. W. Blassingame and C. A. Reynolds defendants, whom he alleges to have been receiving the rents from and in possession of said lands described in said amended petition and that said defendants were unlawfully withholding from him and said children the possession of said lands described and had so used and occupied said lands for five years, to wit, the years, of 1903, 1904, 1905, 1906 and 1907, and that the reasonable rental value of the same is \$800.00 per year, making a total sum of \$4000.00 for the five years which amount the said defendants is due and owing to plaintiff for the use and occupancy of said lands.

Plaintiff also alleges that since the institution of the original suit in 1902 that said lands have been allotted and patented to his said children and *and* his said ward Lewis James as is described and set forth in a copy of said patents which is attached to the  
325 amended petition, the originals of which have — offered in evidence before you. The defendant Blassingame filed his answer November 1903 and defendant Reynolds having made himself a party to this action filed in November 1902 by answer filed in November 1903 now appears also and defends this action. In Reynolds' answer now filed on the 23rd day of April 1908 the defendant admits that plaintiff Dave Hill is the father and natural guardian of J. B. Hill and Harry F. Hill minors, but denies that he is the guardian of Lewis James minor, and defendant further admits that said plaintiff attempted to select the lands described with the object of allotment, but denies that he had a right or authority to select the same. Defendant denies also that J. B. Hill and Harry F. Hill and Lewis James are entitled to the possession of the lands described and denies that the plaintiff is entitled to recover from the defendant herein the rents from said lands before or since the same was selected as allotments by said minors, and also denies that said defendant occupies said lands and is receiving the rents therefrom and denies that the rental value of said lands is \$800.00 per year or that the same was \$4000.00 for the five years. You are instructed that the defendant Blassingame having failed to answer the amended complaint of plaintiff is in default and you are so instructed.

Paragraph No. 3. You are instructed gentlemen of the jury that the burden is upon the plaintiff acting for those in whose behalf he prosecutes this suit, to prove by a preponderance of the evidence, before he can recover; that he is the natural guardian of the minor children J. B. Hill and Harry F. Hill and legal guardian of Lewis James, minor; and that in such legal capacity he was entitled to the possession of the lands sued for and alleged in his complaint for the years 1903, '04, '05, '06 and '07, and that the defendant C. A. Reynolds had withheld from him the possession of said lands and  
326 has used and occupied the same for said five years without paying him, and that said defendant is indebted to him for a reasonable rental value for said premises.

No. 4. Therefore, if under the preceding instruction you find that said plaintiff is guardian of said minor children, and as such was and is entitled to the possession of the lands referred to for the years 1903, '04, '05, '06 and 1907, and that defendant for said years has been in adverse possession thereof and has failed and refused to pay the plaintiff the rental value thereof, then are you are instructed to find as the measure of damage due the plaintiff from the defendant, the reasonable rental value of said land for the years 1903, '04, '06 and 1907, such sum as you may find is warranted from the evidence, but not less than \$557.33 for each of said four years which later is admitted by the defendant to have been collected and received by him.

You are further instructed that if you find the right of possession in the plaintiff as hereinbefore stated, then for the year 1905, the rental value of said land as admitted by the evidence of plaintiff and defendant is \$490.82 and if you find for the plaintiff as submitted in paragraph No. 2 of this instruction, you will add to your finding under said paragraph the said sum of \$490.82 as a part of your verdict in this case for the plaintiff.

No. 6. If after a consideration of all the evidence you should fail to find that the plaintiff was entitled to the possession of the lands in question for any one or more years of the term herein mentioned then for such year or years as you may find from the evidence that the plaintiff was not entitled to the possession of said lands, you should find for the defendant.

327 No. 7. You are further instructed that if you find from the evidence that the plaintiff as such guardian was entitled to the possession for the year 1902 of said lands as against J. W. Blassingame then you are told that such right of possession against Blassingame was also plaintiff's right of possession against the defendant C. A. Reynolds, who subsequently, as heretofore instructed, appeared and filed answer as the defendant in this case.

No. 8. You are instructed that the patents introduced in evidence by the plaintiff in this case, issued to the minors J. B. Hill, Harry F. Hill and Lewis James are conclusive in this action to establish the ownership of said lands in them.

No. 9. The amended complaint of plaintiff will be taken with you in your deliberation in this case and the answer filed by the defendant C. A. Reynolds on April the 23rd, 1908, will also be taken with you, but you are instructed that only so much of said answer as is not contained — clauses five, 7, 8, 9, 10, 13, 14, 15 and last  
328 three lines of clause 11, which said clauses you will in no manner consider in reaching your verdict in this case because the same have been stricken out from your consideration by the court.

No. 10. Therefore gentlemen of the jury if you find that the plaintiff was entitled to the possession of said lands against the defendants Blassingame and Reynolds then you as heretofore instructed will assess the damages of the rental value thereof for each of the five years as heretofore stated in these instructions.

No. 11. You are instructed that the plaintiff Dave Hill has a right

and is permitted in this case to sue in behalf of his minor children J. B. and Harry F. Hill and as the legal guardian of Lewis James for the recovery of the possession of said lands and for the use and occupancy of the same and if you believe from the evidence that the right of possession was in the said Dave Hill as such guardian then you are instructed to find for the plaintiff and also find such sum for the rental value of said lands as is warranted by the evidence and these instructions.

No. 12. You are instructed that you are the sole judges of the facts of the credibility of the witnesses and the weight of the evidence, but the law of the case for your guidance is found in these instructions.

S. H. RUSSELL, *Judge*.

329 And afterward, at the April, 1914, term of said Supreme Court, on the 28th day of April, 1914, the following proceeding was had in said cause, to wit:

5135.

FRANK REYNOLDS, etc., Plaintiff in Error,  
vs.  
HARRY F. HILL et al., Defendants in Error.

And now Justice Riddle announces his disqualification to sit during the hearing and final determination of the above cause, being counsel therein.

And now this cause is argued orally and the cause is submitted on the record, briefs and oral argument.

330 And afterward at the October, 1914, term of said Court, on the 13th day of October, 1914, the following proceeding was had in said cause, to wit:

5135.

(Consolidated with Numbers 5136, 5137, 5138, 5139.)

FRANK REYNOLDS, etc., Plaintiff in Error,  
vs.  
HARRY F. HILL, etc., Defendant in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds, that the judgment of the trial court in the above cause should be reversed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed, not only in the above case, but in causes Nos. 5136, 5137, 5138, 5139, consolidated with the above cause and stipulated to abide

the event. Opinion by Turner, J. All the Justices concur, except Riddle, J., who was of counsel for plaintiff in error, not participating.

331 Filed Oct. 13, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5135, with Which is Consolidated Nos. 5136, 5137, 5138, and 5139.

FRANK REYNOLDS, a Minor, etc., Plaintiff in Error,

vs.

HARRY F. HILL, a Minor, etc., Defendant in Error.

(1). Where in a suit to have the court declare defendant a trustee for plaintiff as to lands in controversy on the grounds that the Secretary of the Interior, as a result of gross mistake of facts and an erroneous view of the law in a contest theretofore pending before him, had rendered a decision allotting the lands to defendant and issuing him a patent therefor, a finding by the Secretary that the lands were abandoned and therefore, a part of the public domain at the time they were entered and improved by B, from whom defendant took title, held, that such finding of abandonment, being a finding of fact, is conclusive on this court.

Held further, That the holding of the Secretary that the Chickasaw Statute applied and made no exception as to minors who thereafter attained their majority, being a mixed question of law and fact, his decision is binding on this court.

(2). Where there is a mixed question of law and fact and the court cannot so separate them as to determine where the error of law is, the decision of the tribunal to which the law has confided the matter is conclusive.

(3). Where in a contest before the Secretary of the Interior contestants based their title upon the Will of a white man, who intermarried with a Chickasaw woman of Indian blood, purporting to devise to his widow and heirs his improvements upon the public domain, which the Secretary found were thereafter abandoned and became a part of the public domain, held, that the Secretary did not err in laying the Will out of the contest before him for the reason that, if admitted, it was without probative force.

(Syllabus by the Court.)



## Error from the Superior Court of Grady County.

Will Linn, Judge.

Reversed.

F. E. Riddle, Attorney for Plaintiff in Error.

C. B. Stuart and Bond &amp; Melton, Attorneys for Defendant in Error.

332

*Opinion of the Court by Turner, J.:*

On March 12, 1912, Harry F. Hill, a minor, by his guardian, sued Frank Reynolds, a minor, by his guardian, in the Superior Court of Grady County. The object of the suit was to have the court declare defendant a trustee for plaintiff as to the lands set forth in his petition wherein he alleges that the Secretary of the Interior, as a result of gross mistake of facts and an erroneous view of the law, in a contest theretofore pending before him, had on May 9, 1911, rendered a decision allotting the lands to defendant. After answer filed, in effect a general denial, there was trial to the court and judgment for plaintiff cancelling the patent issued to defendant for the land in controversy and defendant brings the case here. The decision complained of and all the testimony considered by the Secretary of the Interior in rendering the same was, by agreement of counsel, introduced in evidence together with other documents, not necessary to mention, which were introduced over objection of defendant.

From the opinion of the Secretary it appears that the contests before him were brought in behalf of the plaintiff, Harry F. Hill, J. B. Hill and Lewis James, minor Choctaws, against Frank Reynolds, the defendant, and Willie and Ethel Reynolds, minor Chickasaws, to determine the right to select in allotment certain lands in the Chickasaw Nation (described in the petition) embracing 420 acres. The Secretary found that the land practically embraced the east half of Section 32 and the West half of Section 33 in Township 7 North, Range 6 of the Indian Meridian, and once a part of a much larger tract known as the C. L. Campbell farm, composed of about twelve or fifteen thousand acres. Campbell was a white man who intermarried with a woman of Indian blood and claimed

and occupied the lands in controversy as a part of his entire  
 333 holdings for many years prior to 1896, when he died. Campbell used the major portions of his holdings for grazing but reduced some 1,200 to 1,500 acres to cultivation. His home place and buildings were located on the northeast quarter of Section 33, considerably east of the land in controversy. North of his home place was a large tract of land known as his "Horse Pasture." Following practically the lines of the section in controversy was a fence and although the land thus enclosed was used principally for grazing purposes two fields of 12 or 15 acres each and probably one of 35 acres were in different parts of the enclosure but were not separately

fenced; a fourth field of 60 or 75 acres was in this same enclosure but was only "broke out" and not in cultivation. Campbell left a will, wherein he appointed W. L. Sawyer, administrator, and J. L. Tuttle guardian of his minor children. Said will, certified to as a true copy by the Probate Clerk of Pontotoc County, on April 13, 1904, was sought to be introduced in evidence before the Secretary, as the basis of the Hill title, but was excluded. By this will, Campbell bequeathed his personal property including his interest in said 12,000 or 15,000 acres, to his wife and five minor children, share and share alike; other property he left to his wife and children, which included two adult daughters, in equal shares. The Secretary construed the will to mean that the adults were to receive their shares within one year and that the shares of the minors were to be held in trust by the guardian. After Campbell died his wife and minor children continued to occupy the old Campbell home. In 1899 she married Dr. Minter and together they continued to live at the same place. Upon allotment of the tribal lands in 1902, Mrs. Minter took the land on which the Campbell home was located as her allotment, other lands of the Campbell holdings were taken as the allotment of Dr. Minter and a daughter. Other of said lands were allotted to certain of her children, while other portions were disposed of and the proceeds used for providing allotments elsewhere for other members of the family.

334 About three years after the death of Campbell, that is on January 1, 1899, and before her marriage to Minter, Mrs. Campbell executed for value a bill of sale purporting to convey to one Blassingame her right title and interest in and to the tract of land in controversy and to the north "Horse Pasture," not in controversy. In March 1899 Blassingame took possession of the land described in said bill of sale and held the same until December 10, 1902, during which time he made considerable improvements thereon, and on said date conveyed the same to Brimmage for value, who, on March 6, 1903, assigned his interest to C. A. Reynolds the father of the minor contestee plaintiff in error in this case.

The Secretary found the contestants' chain of title to be as follows: After Tuttle as guardian had set apart to each of the heirs his proportionate share of the Campbell lands, upon his arrival of age, on November 18, 1902, Tuttle as guardian of John and Rex Campbell minors, together with Mrs. Minter, nee Campbell, and her adult sons M. T., L. A., and Holmes Campbell, executed for value, a bill of sale purporting to convey to Dave Hill, the father of contestants, substantially the same land as that described in the bill of sale from Blassingame to Brimmage, that is, the section of land in controversy, and on December 24, 1902, Holmes Campbell and Tuttle, for value, joined in a bill of sale purporting to convey to him 160 acres, 80 acres of which only is in controversy. The Secretary found that neither of these conveyances were made under the authority of, or were confirmed by, any court and further that no serious effort was ever made by anyone to put Blassingame out of possession of the land in controversy. The Secretary said

the evidence before him failed to show that any improvements were made on the land by the widow or any of the Campbell heirs after his death, but that probably some of the land in controversy was cultivated by tenants under the widow. In his opinion the Secretary further says:

"It appears no act of Tuttle's by way of renting the land or disposing of the interest of the heirs therein was ordered or confirmed by any court, either of the Chickasaw Nation or the United States, and every indication points to the conclusion that during the time he was supposed to act as guardian matters were allowed to drift merely to take such course as best they might, without any special control by him pending the allotment of the land \* \* \* During the period these lands were held by Blassingame valuable improvements were made upon them consisting of buildings, fences, wells and cultivation, including the drainage of considerable acreage. Blassingame estimated these improvements to be \$2500."

It is unnecessary to further recite the opinion of the Secretary. It is sufficient to say that he laid out of the controversy Campbell's will together with the bills of sale to Hill and Mrs. Campbell's bill of sale to Blassingame and found, as a matter of fact, that, since the death of Campbell, the land in controversy had been abandoned, if in fact it was ever a legal holding under the law of the Chickasaw Nation, sustained the conveyances made by Blassingame to Brimmage and by him to Reynolds, the father of contestees, and held they were entitled to allot the lands in controversy and patents to them accordingly issued. In so doing he held the holding was no hardship on the heirs of Campbell for the reason that they had already been allotted elsewhere out of the Campbell holdings.

Assailing this decision for gross mistake of facts the plaintiff below, defendant in error here, alleges six and for errors of law he alleges eight, all of which the trial court sustained and set aside the decision of the Secretary in a general judgment in favor of plaintiff. It is sufficient to say of those alleged gross mistakes of fact that plaintiff in error, quoting from the testimony before the Secretary, amply sustains every one of them as found by the Secretary. But

it is contended the Secretary entertained an erroneous view of the law when he held that the testimony was sufficient to show an abandonment of the property in controversy after the death of Campbell and that the continued possession of Blassingame, under the bill of sale from Mrs. Campbell, from 1899 to 1902, when he conveyed to Brimmage was not sufficient to show such abandonment. The law applied by the Secretary was an act entitled "An Act defining what shall constitute a claim in the Chickasaw Nation, Section 6:

"Be it further enacted that any citizen that abandons a claim for two years, it shall become Public Domain of the Chickasaw Nation and subject to entry by any citizen of this Nation \* \* \*

If the Secretary erred, it would seem to follow that the widow and heirs of Campbell had a right under his will to convey the land in controversy to Hill, that is, if the will had any probative force. The Secretary, in effect, held that it did not, but whether he erred

or not, under our view of the case it is not necessary to decide. In considering this assignment we are invited to go into the testimony, which defendant in error arrays from the record, and say whether the Secretary erred in arriving at his conclusion that the land was abandoned. We decline for the reason that the finding of abandonment was a conclusion of fact, and not of law, and hence is binding on us.

In *Cook et al. vs. McCord et al.*, 9 Okla. 200, the court cited *Lee vs. Johnson*, 116 U. S. 48, where it is held that abandonment is a question of fact, and in the syllabus said:

"The question as to whether or not a lot has been abandoned by the claimant, is a question of fact, and the findings of the proper officers of the land department are, in the absence of fraud, imposition or mistake, final upon that question."

In *Ross v. Stewart*, 25 Okla. 611, it is said:

"When officers of the land office decide controverted questions of fact, in the absence of fraud, imposition, or mistake, their decision on those questions are final, except as they may be reversed on appeal in that department."

In holding that the lands were abandoned between 1899 and 1902, the Secretary impliedly held that the Chickasaw Statute, *supra*, made no exception as to the Campbell minors who thereafter attained their majority. This is urged as error on the ground that the facts could not amount to an abandonment as to them. But we are not at all sure that in so holding the Secretary erred as a matter of law. The statute makes no exception as to minors but reads: "Any citizen that abandons a claim for two years \* \* \*" But let that be as it may the question before him being a mixed question of law and fact, his decision is also binding on us. In *Marquez vs. Frisbie*, 101 U. S. 473, it is said:

"Even where there is a mixed question of law and fact, and the court cannot so separate them as to see clearly where the mistake of law is, the decision of the tribunal to which the law has confided the matter is conclusive."

See also *Jordan vs. Smith*, 12 Okla. 703, *Payne v. Foster*, 9 Okla. 259.

As this finding of fact by the Secretary cannot be disturbed it follows that, by abandonment, the land became public domain subject to entry by Blassingame. And, as the Secretary was right in laying out of the case the paper title of both sides to the contest, it would be unprofitable to further pursue the inquiry of whether the Secretary erred in holding that the widow and heirs of Campbell had anything to convey or to consider further the links in the chain of title of either contestants or contestees, as defendant in error would have us to do by considering what he has to say beginning on page 48 of his brief. Neither would it be profitable to say whether the Secretary erred in refusing to admit in evidence, as incompetent, the will of Campbell and consider the same as the foundation of the Hill title. This for the reason that the same, if so admitted, could have no force or effect to authorize a conveyance of lands subsequently abandoned and a part of the

public domain such as were the lands in controversy at the time said conveyances were sought to be made. Besides it would seem that the Secretary is the exclusive judge of the competency 338 of this evidence. See *Wiseman vs. Eastman*, 57 Pac. (Wash.) 398 and cases cited.

For obvious reasons we will not consider the action of the trial court in rejecting the offer of evidence by plaintiff of the record in *Reynolds vs. Hill*, 28 Okla. 533.

For the reason that the court erred in holding that the decision of the Secretary was based upon gross mistakes of fact and erroneous views of the law and, as a result the patents to the land in question were issued to Frank Reynolds, instead of Harry F. Hill, which we find to be not so but that the patent was of right issued to said Reynolds, the judgment of the trial court is reversed not only in this case but in causes Nos. 5136, 5137, 5138, 5139, consolidated herewith and stipulated to abide the event.

All the Justices concur, except Riddle, J., who was of counsel for plaintiff in error, not participating.

339 And thereafter, at the October, 1914, term of said Court, on the 26th day of October, 1914, the following proceeding was had in said cause, to wit:

5135.

FRANK REYNOLDS, etc., Plaintiff in Error,

vs.

HARRY F. HILL, etc., Defendant in Error.

And now on this day it is ordered by the court that the mandate of this court in the above cause be stayed pending the disposition of petition for rehearing filed herein.

240 In the Supreme Court of the State of Oklahoma.

No. 5135, with Which is Consolidated Nos. 5136, 5137, 5138, and 5139.

FRANK REYNOLDS, a Minor, etc., Plaintiff in Error,

vs.

HARRY F. HILL, a Minor, etc., Defendant in Error.

*Petition for Rehearing.*

To the honorable judges of said court:

Come now the defendants in error, and respectfully petition the court to grant a rehearing in the above entitled cause, for the reason that questions decisive of the case and duly submitted by counsel have been overlooked by the court, and for the reason that the decision is in conflict with controlling decisions to which the attention of the court was not called, either in brief or in oral argument, and

which have been overlooked by the court, and for these reasons the decision of the court rendered herein, is erroneous.

## I.

The court overlooked the fact that the Campbell will is really the common source of title for the plaintiffs in error, and defendants in error in this cause. It is undisputed, because it could not be disputed, it is true, because it could not be false, that the land in controversy, was, at the time of his death, in the possession of C. L. Campbell, a citizen of the Chickasaw Nation, who died in the year 1896, leaving a widow and minor children. It is further just as true, that at the time of his death, Campbell left a will giving all his property to his wife and minor children. The defendants in error claim under that will. The plaintiffs in error claim under Campbell's widow, who took under the will. The will, therefore, is in this case, a muniment of title and is the basic foundation of the whole case. This court in its opinion sweeps aside the will with the judicial declaration that the land in controversy was abandoned by the guardian for the minor heirs of Campbell, and therefore, was open to entry by the plaintiffs in error. The court, however, really intimates that if it were not for its conclusion, as to abandonment, it would consider the will, and this brings us to the next proposition.

## II.

The finding that the land in controversy, (which under the Campbell will, belonged to the Campbell Minors) was abandoned by the guardian of the Campbell minors, was we respectfully submit, not only a gross mistake of fact, but a clear mistake of law.

We submit to the court, that whatever may be the fate of this case, and whatever the final judgment of the court may be, it is untenable, and unjust to base its final judgment upon abandonment. This court in its opinion declared that abandonment is a mixed question of law and fact. Be this as it may, the Supreme Court of the United States has never yet held that, even though it be a mixed question of law and fact, where there is a gross misconception of the facts and a clear mistake of law, a judgment can stand, and even if it had so held, our own court in cases already furnished to the court has held otherwise.

We fully realize that in a large record like this, extending over a long period of years, that the most careful and intelligent scrutiny may yet overlook some feature which is fatal to the controversy. We say, and we respectfully reiterate, that, as a matter of fact, nothing having either the color or complexion of abandonment was actually proved, before the Secretary of the Interior. We endeavored, in our former brief, to outline to the court, as briefly and as succinctly as we could, the testimony in this case touching the question of abandonment.

This court will remember that Tuttle, the guardian, swore time and again, that he had never surrendered this land and never abandoned it and never intended to abandon it. It is clear that Blessingame



went into possession of the land without authority, and without lawful right. It is also clear and undisputed that Blassingame's title and right of possession were disputed by Tuttle, guardian of the Campbell Minors. On pages 16 and 17 of our former brief in this case, we quote verbatim from the testimony, and show that just as soon as Tuttle heard that Blassingame was in possession of these premises he notified him to get off. Our quotation shows, that Tuttle's foreman, Ladd, notified Blassingame to quit the possession of these lands, very soon after Blassingame entered. Our quotation here shows, that Reford Bond was employed as attorney to  
 343 bring suit against Blassingame for possession. If there is any evidence in the record to dispute these statements, a diligent search by us has not been able to find it.

The Honorable Court predicates its decision as to abandonment on the following extract from the opinion of the Secretary of the Interior:

"It appears no act of Tuttle's by way of renting the land or disposing of the interest of the heirs therein, was ordered or confirmed by any court, either of the Chickasaw Nation or of the United States, and every indication points to the conclusion that during the time he was supposed to act as guardian matters were allowed to drift merely to take such course as best they might, without any special control by him pending the allotment of the land. \* \* \* During the period these lands were held by Blassingame, valuable improvements were made upon them consisting of buildings, fences, walls, and cultivation, including the drainage of considerable acreage. Blassingame estimated these improvements to be \$2500."

In this extract, the Secretary makes the bald and unsupported statement that as far as these premises are concerned, Tuttle allowed matters to "drift" without any control by him pending the allotment of the land. This finding of the Secretary, as we have heretofore contended, and contend now, was based upon a gross misconception of the facts. It is undisputed that Blassingame's position was contested by Tuttle, the guardian, from the very beginning; that Blassingame was notified to quit; and attorneys employed to enforce the minors' rights. How is it possible to say that Tuttle let things "drift" and exercised no control? It seems to us that nothing could be looser and more unsatisfactory to the court than this disjointed and unfounded statement of the Secretary. If this case has been submitted to this Court to find as an original proposition whether there has been an  
 abandonment in fact of these premises, by the guardian,  
 344 leaving out of consideration his legal authority and power to abandon, this court would have said unhesitatingly that there was no such an abandonment in fact. It is therefore, on account of this gross mistake of fact, on the part of the Secretary, that we have invoked the judgment of a Court of Equity.

We think the court, in adopting the foregoing finding of the Secretary, has overlooked the fundamental proposition that such finding is utterly unsupported by evidence.

But, there is still another proposition, yet to be considered, and that is; the legal power on the part of Tuttle, as guardian, to aban-



don the interest of his wards in lands and tenements. It is a well settled legal proposition that a minor being non sui juris, cannot be charged with laches in that it is inconsistent with the very nature and substance of minority, to fasten upon such minority the obligations and penalties which attach to those who have reached their majority. A guardian has no more right to abandon, or to attempt to abandon his wards' interest in land, than he has to steal his wards' money. How the laches of a guardian, even if existed, can be imputed to a helpless and irresponsible minor is beyond our comprehension. If the guardian can be permitted, as a matter of law, to abandon his wards' interest by his neglect, or, as the Secretary says, "by permitting things to "drift" along, it is high time that our probate laws be revised.

To our minds it is shocking to say that a worthless guardian, may by inaction destroy the patrimony of his wards. We cited several authorities in our original brief upon this proposition, and now cite the court to the following authorities, which were not heretofore cited, and which in our judgment ought to be controlling.

The court is doubtless familiar with the general proposition, that a guardian cannot through neglect or abandonment deprive his ward of any right. Under this proposition, we refer the court especially to Woerner's Work on Administration, (2nd Ed.) Vol. 1, Sec. 99. Here it is held that neither the guardian nor the widow can by negligence or abandonment deprive the minor of his homestead right.

But the case which is controlling upon this court, is the case of the Western Union Telegraph Company v. Davenport, 24 L. Ed. (U. S.) page 1047. The Syllabus of that case reads as follows:

"Minor heirs cannot be precluded from asserting their rights to property by reason of any negligence of their guardian."

This case involved the right to stock in a corporation. Clearly, if personal property cannot be lost to the minor through neglect of the guardian, then it would be impossible, as in this case, to lose real estate. Mr. Justice Field, in this case, on page 1050, in answering the proposition that the minors had lost their rights, through the culpable negligence of the guardian, said:

"We do not think it at all necessary to comment at length upon this singular position. Even if it were impossible, as it is, not to preclude the minor heirs from asserting their rights to property received from their father, by reason of any negligence of their guardian, we are unable to perceive any necessary connection between her brother's insolvency and the forgery of the children's names."

How like the case at bar, is this case. Here these Campbell minors received certain lands from their father by his will, and yet the Secretary if the Interior held, that inasmuch as the guardian permitted things to "drift" along, these minors through such permitted drifting, lost their patrimony. We beg to say that in our judgment this doctrine is so novel and startling that it refutes itself.

We therefore, contend, that the question of abandonment above, is as a question of law and fact, eliminated from this case, and as

this is true the court, will necessarily go to the will and determine this case upon the real issues presented. If abandonment is out of the way the court must go to the merits of the controversy, and when this is done, we confidently believe a different conclusion will be reached. For these reasons; plaintiffs in error say that decision of this court is in conflict with controlling decisions not previously called to the attention of the court, that the decision is based upon a misconception of the facts with reference to abandonment, and upon an overlooking of the law applicable hereto.

We, therefore, respectfully petition that the court grant to the Plaintiff in Error a rehearing in the above cause.

BOND & MELTON,  
C. B. STUART,  
*Attorneys for Plaintiff in Error.*

Endorsed: No. 5135. Frank Reynolds, a minor, etc., Plaintiff, vs. Harry F. Hill, a minor, etc., defendant. Petition for Rehearing. Filed Oct. 26, 1914, W. H. L. Campbell, Clerk. Stuart, Cruce & Cruce, Attorneys for Plaintiff in error.

347 Filed November 5, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5135, Consolidated with Nos. 5136, 5137, 5138 and 5139.

FRANK REYNOLDS, a Minor, etc., Plaintiff in Error,  
vs.  
HARRY F. HILL, a Minor, etc., Defendant in Error.

*Reply to Petition for Rehearing.*

Counsel for defendants in error in their Petition for Rehearing, first assert: "The court overlooked the fact that Campbell's will is really the common source of title of plaintiffs in error, and defendants in error in this cause." Counsel never were as badly mistaken, if they are under the impression that plaintiffs in error claim or have ever claimed any right, title or interest of any character under the Campbell will. On the contrary, if counsel will examine the brief filed by plaintiffs in error in the trial court and by them in this court, and will examine the record which was before the Land Department, they will ascertain that plaintiffs in error have contended from the beginning of this litigation that the will made by Campbell had no force and effect to convey property. We have always contended that this will could not convey any interest in any of the lands involved in this litigation. On the other hand, counsel for defendants in error have, from the beginning sought to recover these lands under said will. That C. L. Campbell, at the time and prior to his death in 1896 had no interest of any character, either present, future, or contingent which he could pass by will, is too plain for

argument. That this could not be done has been held by the Indian Territory Court of Appeals, by the Circuit Court of Appeals 348 of the Eighth Circuit, by this Court, and by the Supreme Court of the United States. When this proposition is established beyond controversy, it puts an end to any right, interest or claim by defendants in error. If the court is satisfied this will conveyed no interest or right to defendants in error, and we believe the court to be satisfied upon this proposition, then that puts and end to this lawsuit.

It has always appeared to us a little less than absurd to even suggest that Campbell, in 1896, long before the passage of the Curtis act, could convey any kind of interest to any one by will to take as allotment any of the lands of the Choctaw and Chickasaw Nations. This court has held that such could not be done, even after the passage of the Curtis Act and the Atoka Agreement and the Supplemental Agreement of 1902; and certainly it could not be done prior to the passage of those acts. *Bledsow vs. Wortman*, (Okla.), 35 Okla. 261, *Sanders vs. Sanders*, 28 Okla. 59, *Cochran vs. Hocker*, 34 Okla., 493. The Supreme Court of the United States has held to the same effect: *Gretts et al. vs. Fisher* 224, U. S. 640. *McKee vs. Henry*, 201 Fed. 74. If this contention made by defendants in error was in any sense sound, then there are ten or fifteen thousand acres of land included in the will that the heirs of C. L. Campbell can recover from those to whom it was allotted, or to whom it was sold by the government, by filing a suit in equity and introducing in evidence the will.

#### The True Source of Title of Plaintiffs in Error.

Plaintiffs in error contended from the beginning of this litigation that they obtained the right to take this land in allotment by reason of the fact that the widow of C. L. Campbell was left in possession and control of same, and that the guardian, if not by his express consent did tacitly agree that the widow of C. L. Campbell might consent for Blasingame, who was a recognized citizen of the 349 Tribe, to take possession of, inclose, break out and put into a state of cultivation and improve the lands in question; Campbell's widow, being in possession and control of said land, did expressly give her consent, and the said Blasingame did take exclusive control and possession, before the taking effect of the Atoka Agreement, and did place the same under fence, break the same out, and put it in a good state of cultivation, drained the lowlands put other improvements in the way of houses and barns upon the lands in question, and was the exclusive owner of said improvements on said land on the date the Atoka Agreement went into effect; that his grantee, plaintiffs in error, were the exclusive and sole owners of the improvements upon said land, and had the quiet and undisturbed possession of same on the date the Supplemental Treaty took effect, to-wit: September 25, 1902; and by virtue of being the owner of said improvements and in possession of said lands, they were entitled to take same in allotment. They also claimed, and the Sec-

retary of the Interior held, that so far as the Campbell heirs were concerned, this land had become public domain; that plaintiffs in error, having secured the peaceable possession and being the owner of the improvements situated thereon, and having been permitted to file upon said land, secured a preference right to the same over defendants in error, or any other member of the tribe.

In Part Two, in the argument of defendants in error in their petition for re-hearing, they most earnestly and enthusiastically challenge the correctness of the opinion of this court in holding that in adopting the finding of the Secretary of the Interior, that Tuttle, the guardian, undertook to dispose of the interest claimed by the minors, without any order or confirmation of any court; and wherein the Secretary further held, in substance, that every indication points to the conclusion that Tuttle permitted the matters to drift as  
350 best they could, and had thereby abandoned any interest or right in the lands.

After counsel argue that this holding is contrary to law and unsound, then they proceed to say that if the court should reverse itself upon this proposition, defendants in error would necessarily have to look to the will for their title. In other words, if counsel's contention was sustained, they conclusively admit they would have no right to recover this land in this proceeding, save and except such right as they might secure under the will.

We do not believe that the Secretary intended to hold, neither did this court, in disposing of this proposition, that conceding the minors had a title to the land involved, that the guardian could, by his acts of omission or commission, except in the manner provided by law, dispose of or abandon the right of the minors. If the minors had any real interest in the land in controversy, neither could the guardian have conferred any right in defendants in error by the alleged conveyances, in that they were not made upon order of any court, or sanctioned or approved by any court, and certainly the guardian could not convey real estate by any such proceedings. We did contend, however, and the Secretary did so hold, that these heirs and the guardian could waive their rights to take this land in allotment by placing another citizen of the tribe in possession of same and standing by and permitting him to place valuable improvements thereon, preparatory to allotment, without making any objection thereto, or effort to recover possession of same, and that by such acts, the Campbell heirs clearly showed an intention to abandon this land for allotment purposes, or otherwise.

As we have pointed out in our printed brief, every finding of fact of the Secretary of the Interior challenged by this proceeding as a gross mistake of fact, is fully supported by the testimony.

We have further shown in our printed brief that there is  
351 not a single declaration of law made by the Secretary of the Interior, unmixed and disconnected from any question of fact which, if it had been found to the contrary, would have vested any right in defendants in error. Briefly stated, defendants in error made a case by their petition, but wholly failed to make any case by their evidence. But to the contrary, they affirmatively and conclusively

proved that the decision of the Secretary of the Interior was sustained by both law and fact.

We respectfully submit that the decision of this court is right in point of law and is equitable and just.

HARRY HAMMERSLY,  
*Attorney for Defendants in Error.*

I have mailed a copy hereof to attorneys for Plaintiffs in Error.  
F. E. RIDDLE.

352 And afterward, at the October, 1914, term of said court, on the 17th day of November, 1914, the following proceeding was had in said cause-, to wit:

5135,	Frank Reynolds, minor, etc.,	vs.	Harry F. Hill, minor, etc.
5136,	" " " " "	vs.	" " " " "
5137,	" " " " "	vs.	" " " " "
5138,	" " " " "	vs.	" " " " "
5139,	" " " " "	vs.	" " " " "

And now on this day it is ordered by the court that the petition- for rehearing filed in the above styled and numbered causes, be, and the same are hereby denied.

353 And afterward, at the October, 1914, Term of said court on the 20th day of November, 1914, the following order was filed in said cause-:

5135,	Frank Reynolds, etc.,	vs.	Harry Hill, etc.
5136,	" " " " "	vs.	" " " " "
5137,	" " " " "	vs.	" " " " "
5138,	" " " " "	vs.	" " " " "
5139,	" " " " "	vs.	" " " " "

And now on this day, November 20th, 1914, it is ordered by Turner, Vice Chief Justice, that the mandates of this court in the above causes be, and the same are hereby stayed for a period of 30 days, as per motion for stay of mandate filed herein on November 20, 1914.

354 In the Supreme Court of the State of Oklahoma.

*Certificate.*

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 353 pages, numbered from 1 to 353, both inclusive, are a full, true and complete transcript of the record and proceedings in said Supreme Court in case No. 5135, Frank Reynolds, a minor, et al., Plaintiffs in error, vs. Harry F. Hill, a minor, etc., Defendant in error, except a plat of a part of

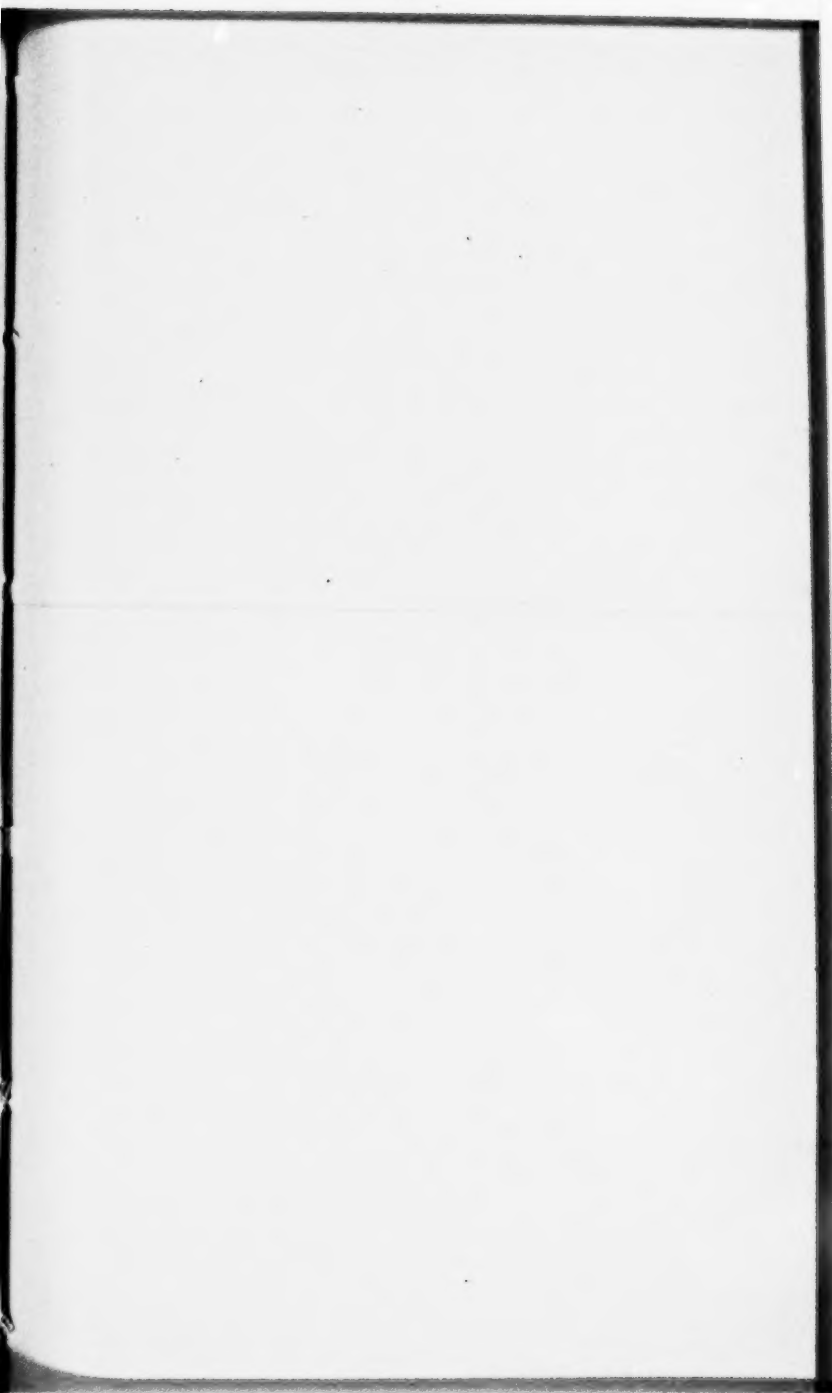
the U. S. Government plat of survey of Township 7, North, Range 6 West, I. M., which appears in the case made between pages 148 and 149, left out of this transcript at the request of attorneys for the plaintiffs in error, as the same remains on file and of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said Court, at Oklahoma City, this 13th day of January, 1915.

[Seal Supreme Court, State of Oklahoma.]

WILLIAM M. FRANKLIN,  
*Clerk of the Supreme Court of the  
State of Oklahoma.*

Endorsed on cover: File No. 24,540. Oklahoma Supreme Court. Term No. 337. Harry F. Hill, a minor, and J. B. Hill, a minor, by their next friend and legal guardian, Dave Hill, and Louis James, by his legal guardian, plaintiffs in error, vs. Frank Reynolds, a minor, &c. Filed January 28th, 1915. File No. 24,540.





In the Supreme Court of the  
United States

October Term, 1911

Henry T. Hall, a minor, and  
E. Hall, a minor, by their  
next friends and legal guardians,  
John Davis Hall and Lewis  
Davis, for his legal guardian,  
*Plaintiffs in Error.*

Frank Bernhardt and others,  
*Defendants in Error.*

BRIEF OF PLAINTIFFS IN ERROR

C. R. STARR  
Raymond Scott  
Alfred Marshall  
*Counsel for Plaintiffs in Error*

## INDEX

	Page
Statement of Case .....	1-6
Assignments of Error .....	6-9
Statutes Under Consideration .....	9-12
Points and Authorities .....	13-15
Argument .....	16-68

### First Proposition:

The Holding of the Department of the Interior on Review and the Decision of the Supreme Court of Oklahoma that the land and improvements in controversy had been abandoned by the guardian and heirs of C. L. Campbell, deceased, and that Blasingame acquired a prior right thereto by his possession taken in February, 1899, was a mistake of law upon the admitted and uncontradicted facts... 16

### Second Proposition:

The will of C. L. Campbell, deceased, was a muniment of title relied upon by all parties and the Department of the Interior committed error of law in laying this instrument out of the controversy and deciding the contest on other grounds ..... 44

### Third Proposition:

There is no evidence in the record to support the finding of the Department

of the Interior that the land in controversy was Public Domain of the Chickasaw Nation in February, 1889, when Blasingame entered into possession..... 51

**Fourth Proposition:**

Neither Blasingame nor Reynolds were bona fide purchasers of the possessory right to the land and improvements..... 62

**Fifth Proposition:**

Reynolds having purchased the possessory right and improvements on the land in controversy while the ejectment suit of Hill vs. Blasingame was pending in the United States Court and with actual knowledge of such suit and the claims of Hill and having appeared in such action as a voluntary defendant and defended therein and the judgment in said cause having determined that when the suit was instituted in 1902 Hill was entitled to the possession of the land, such judgment is conclusive upon the parties here, they being privies of Reynolds.... 65

## TABLE OF CASES

	Page
Act of Congress, June 28, 1898 .....	47
Atoka Agreement—Act of Congress April 28, 1904 .....	48
Act of Congress of July 1, 1902 (Supple- mental Agreement with Choctaw and Chickasaw Nations) .....	58
Act of Congress, July 1, 1902, Sec. 11.....	59
Atchison v. McMurray, 5 Watts, 13.....	38
Blounts v. Moore, 54 Ala. 360 .....	49
Blakeney v. Bishop, Decided May 31, 1907 (M. 602, A. A. C. 278) .....	52
Boone v. Childs, 35 U. S. 177 .....	63
Bird v. Jones, 37 Ark. 195. ....	63
Cook v. Cook, 47 Atl. 732 .....	49-50
23 Cyc. 1263 .....	68
Decision of Supreme Court of Oklahoma....	46
Decision of Department of Interior .....	45
Decision of Supreme Court of Oklahoma....	16
Decision of Department of Interior .....	51
Font v. Clark, 11 L. R. A. 861 .....	41
Grant v. Allison, 43 Pa. 427 .....	36
Gibson v. Herriot, 17 S. W. 589 .....	41-42
Howe et al v. Parker et al., 190 Fed. 738....	40
Henry v. Harold, 57 Ark. 573 .....	64
Holman v. Patterson, 29 Ark. 357 .....	64
Hargrave v. Cherokee Nation, 129 Fed. 186	64
Hurst v. Sawyer, 2 Okl. 470.....	66
In Re Poffs Guardianship, 103 S. W. 765....	47

	Page
In Re Feland Estate, 26 Okl. 448 .....	47-48
Jordan v. Smith, 12 Okl. 703 .....	40
Jower v. Phelps, 33 Ark. 391.....	63
Knotts v. Stearns, 91 U. S. 638 .....	50
Lockhart v. Johnson, 181 U. S. 516.....	36
Lindbloom v. Rocks, 146 Fed. 660 .....	38-39
Land v. Johnson, 156 Cal. 253 .....	39
Lockhart v. Willis, 9 N. Mex. 263.....	39-40
McAlpine v. Ry. Co., 68 Kan. 207.....	39
Meikel v. Borders, 129 Ind. 529 .....	50
Marvin v. Shilling, 12 Mich. 356 .....	50
May v. Leclair, 78 U. S. 217 .....	63
Merrick v. Hutt, 15 Ark. 344 .....	64
Meyers l. Mathis, 46 S. W. 178 .....	66
Okla. City v. McMasters, 12 Okl. 570.....	67
Paine v. Griffiths, 86 Fed. 452, affirmed in 153 Fed. 143 .....	36-38
Pratt v. Ratliff, 10 Okl. 168 .....	67
Rockefeller v. Oliver, 41 Ark. 169 .....	63
Richey v. Johnson, 50 Ark. 551.....	64
Ry. Co. v. Wagand, 32 Sou. 744.....	36-37
Sisk v. Almon, 34 Ark. 391 .....	63
Utah Mining Co. v. Dickert Sulphur Co., 21 Pac. 1002 .....	39
Vattier v. Hinde, 32 U. S. 252.....	63
Wilmore Coal Co. v. Brown, 147 Fed. 931...	36-37
Woerner on Arministration, 2nd Ed. Vol. 1 Sec. 99 .....	41
Western Union Tel. Co. v. Davenport, 97 U. S. 369 .....	41-42
Woodworth v. Hennessy, 32 Okl. 267 .....	-67

# In the Supreme Court of the United States

October Term, 1915

---

Harry F. Hill, a minor, and J.  
B. Hill, a minor, by their  
next friend and legal guar-  
dian, Dave Hill, and Lewis  
James, by his legal guardian,  
*Plaintiffs in Error,*

vs.

Frank Reynolds, and others,  
minors,  
*Defendants in Error.*

No. 337

---

## BRIEF OF PLAINTIFFS IN ERROR.

---

### STATEMENT.

C. L. Campbell, a recognized citizen of the Chickasaw Nation by marriage, died in 1896, leaving a widow and several minor children, all citizens by blood of the Chickasaw Nation. C.

Choctaw citizen. Brimage never took possession, never paid the agreed price, and never attempted to occupy the land. In February, 1903, C. A. Reynolds, a Choctaw citizen, accepted an assignment of the quit claim deed from Blasingame to Brimage and received possession of the land and improvements from Blasingame with full knowledge of the ejectment suit pending and Hill's claim to the land and improvements. Reynolds, afterwards in 1903, entered his voluntary appearance in the ejectment suit and took up the defense under Blasingame's claim. In 1904 Reynolds made application for his children to allot the land. The children of Dave Hill contested. The Commission to the Five Civilized Tribes heard the contest and awarded the allotments to the Hill children. This was affirmed by the Commissioner of Indian Affairs and the Secretary of the Interior. On motion for re-hearing and review, the Acting Secretary of the Interior set aside the former decisions, struck from the record the title and muniments of title upon which both the parties relied and upon a new theory of the controversy, awarded the allotments to the Reynolds children. Patents were issued and these suits brought to declare a trust. In 1908, the ejectment suit filed



in the United States Court for the Southern District of the Indian Territory at Chickasha in 1902 was tried. Blasingame defaulted and Reynolds defended. Judgment was awarded Hill for possession and rents. Reynolds appealed to the Supreme Court of Oklahoma and the judgment was affirmed, mandate issued and Hill was placed in possession of the land under writ of restitution. In the present cases, the trial court cancelled the patents and gave title to the Hill children. The Supreme Court of Oklahoma reversed the trial court and held:

(1). The finding by the Secretary of the Interior that the lands were abandoned by the guardian of the Campbell heirs was a finding of fact and conclusive on the court.

(2). That the holding of the Secretary that the Chickasaw statute of abandonment applied and made no exception as to minors was a mixed question of law and fact, and binding on the court.

(3). That the Secretary did not err as a matter of law in laying out of the controversy the will of C. L. Campbell, deceased, the basis and muniment of title of both parties upon the ground

that the Indian courts were abolished and the officers of such courts prohibited from performing any act in connection with the exercise of the court's jurisdiction.

(4). That the Secretary of the Interior did not err in holding the land in controversy to be public domain at the time Blasingame entered in possession in February, 1899.

At the time Blasingame entered into possession in February, 1899, none of the heirs of C. L. Campbell, deceased, had arrived at majority.

### **ASSIGNMENT OF ERRORS.**

#### **I.**

The Supreme Court of the State of Oklahoma committed error in reversing judgment of the Superior Court of Grady County and in rendering judgment against the defendants in error, and in favor of the plaintiffs in error.

#### **II.**

The Supreme Court of the State of Oklahoma committed error in holding that the claim or right of the minor heirs of C. L. Campbell, deceased, under the Acts of Congress of the 28th day of

June, 1898, and July, 1902, were, and had been abandoned by the Guardian of the minors.

### III.

The Supreme Court of the State of Oklahoma committed error in denying to defendants in error the right and title set up and claimed by defendants in error under the Acts of Congress of June 28th, 1898 and September 25th, 1902, known as the Atoka Agreement and the Supplemental Agreement thereto.

### IV.

The Supreme Court of the State of Oklahoma erred in holding that the Act of Congress of June 28th, 1898, providing that after the passage of that act, the laws of the various tribes or nations of Indians should not be enforced at law or in equity by the courts of the United States or in the Indian Territory.

And, the section in the same act providing that all tribal courts in the Indian Territory should be abolished applied to the Chickasaw tribe of Indians where the lands sought to be allotted in this case is located.

### V.

The Supreme Court of the State of Oklahoma

erred in holding that the will of C. L. Campbell, deceased, which was the paper title upon which the defendants in error relied, should not be considered in the determination of the case, and in holding that said will was of no force and effect as a muniment of title, because its probate was unauthorized and void by virtue of the provisions of the Acts of Congress, set out in the fourth assignment.

#### VI.

The Supreme Court of the State of Oklahoma erred in not holding that the will of C. L. Campbell aforesaid, was duly probated, was the common source of title to all the parties of this litigation and was admissible in evidence.

#### VII.

The Supreme Court of the State of Oklahoma erred in not holding that under the Atoka Agreement aforesaid, and the Supplemental Agreement thereto, these defendants in error were entitled to allot the lands in controversy, under and by virtue of said Acts of Congress under which the defendants in error claim and set up their rights to the allotment in controversy.

Wherefore the said plaintiffs in error pray

that the judgment of the Supreme Court of Oklahoma be reversed and that judgment be rendered for the plaintiffs in error as prayed in their petition.

### STATUTES.

Section 6 of an Act of the Chickasaw Nation:

“Be it further enacted, that any citizen who shall abandon any claim for the period of two years (it) shall become public domain of the Nation, and subject to entry by any citizen of this Nation; any act or part of acts coming in conflict with the provision of this act be and the same is hereby repealed, and that this act take effect from and after its passage.”

Provisions of the Atoka Agreement, 30 Statute at large, page 506:

“That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes so as to give to each member of these tribes so far as possible a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

“That each member of the Choctaw and Chickasaw tribes, including Choctaw and Chickasaw freedmen, shall, where it is possible, have the right to take his allotment on land, the improvements on which belong to him, and such improvements shall not be es-

timated in the value of his allotment. In the case of minor children, allotments shall be selected for them by their father, mother, guardian, or the administrator having charge of their estate, preference being given in the order named, and shall not be sold during his minority."

Sections 11, 19, 25 and 70, of the Supplemental Agreement with the Choctaw and Chickasaw Nations, 30 Statute at large, page 495:

"There shall be allotted to each member of the Choctaw and Chickasaw tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw Nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw Nations; to conform, as nearly as may be, to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements. \* \* \*

"It shall be unlawful after ninety days after the date of the final ratification of this agreement for any member of the Choctaw or Chickasaw tribes to enclose or hold possession of in any manner, by himself or through another, directly or indirectly, more lands in value than that of three hundred and twenty acres of average allottable lands of

the Choctaw and Chickasaw Nations, as provided by the terms of this agreement, either for himself or for his wife, or for each of his minor children if members of said tribes; and any member of said tribes found in such possession of lands, or having the same in any manner enclosed after the expiration of ninety days after the date of the final ratification of this agreement, shall be deemed guilty of a misdemeanor.

“After the opening of a land office for allotment purposes in both the Choctaw and the Chickasaw Nations any citizen or freedman of either of said nations may appear before the Commission to the Five Civilized tribes at the land office in the nation in which his land is located and make application for his allotment and for allotments for members of his family and for other persons for whom he is lawfully authorized to apply for allotments, including homesteads, and after the expiration of ninety days following the opening of such land offices any such applicant may make allegation that the land or any part of the land that he desires to have allotted is held by another citizen or person in excess of the amount of land to which said citizen or person is lawfully entitled, and that he desires to have said land allotted to him or members of his family as herein provided; and thereupon said Commission shall serve notice upon the person so alleged to be holding land in excess of the lawful amount to which he may be entitled, said notice to set forth the facts alleged and the name and post-office address of the person alleging the same, and the rights and consequences herein provided, and the person so alleged to be



holding land contrary to law shall be allowed thirty days from the date of the service of said notice in which to appear at one of said land offices and to select his allotment and the allotments he may be lawfully authorized to select, including homesteads; and if at the end of the thirty days last provided for, the person upon whom said notice has been served has not selected his allotment and allotments as provided, then the Commission to the Five Civilized Tribes shall immediately make or reserve said allotments for the person or persons who have failed to act in accordance with the notice aforesaid, having due regard for the best interest of said allottees; and after such allotments have been made or reserved by said Commission, then all other land held or claimed, or previously held or claimed by said person or persons, shall be deemed a part of the public domain of the Choctaw and Chickasaw Nations and be subject to disposition as such.

“Allotments may be selected and homesteads designated for minors by the father or mother, if members, or by a guardian or curator, or the administrator having charge of their estate, in the order named. \* \* \*

#### **POINTS AND AUTHORITIES.**

(1) Where the facts are admitted or where there is no conflict in the evidence abandonment is a question of law.

*Paine v. Griffith*, 86 Fed. 452.

*Wilmore Coal Co. v. Brown*, 147 Fed. 931.

*Grant v. Allison*, 43 Pa. 427.

*Ry. Co. v. Wagand*, 32 So. 744.

*Lockhart v. Johnson*, 181 U. S. 516.

(2) The burden of proof is on the party who asserts abandonment.

*Lindblom v. Rocks*, 146 Fed. 660.

(3) Failure to occupy property or failure to sue for possession are not sufficient - to show abandonment.

*Lindbloom v. Rocks*, 146 Fed. 660.

*Lamb v. Johnson*, 156 Cal. 253.

*McAlpine v. Ry. Co.* 68 Kansas 207.

(4) A party ousted from possession can not be charged with abandonment.

*Lockhart v. Willis*, 9 N. M. 203, 50 Pac. 318.

*Utah Mining Co. v. Sulphur Co.* 21 Pac. 1002.

(5) Whether there is any evidence to support a finding of fact is a question of law.

*Jordan v. Smith*, 12 Okla. 703.

*Howe v. Parker*, 190 Fed. 738.

(6) A guardian can not abandon the property of his ward and a minor can not lose his rights by abandonment.

Woerner on Administration, 2nd Ed.  
Vol. 1, Sec. 99.

*Fout v. Clark*, 11 L. R. A. 861.

*Gibson v. Herriot*, 17 S. W. 589.  
*Western Union Tel. Co. v. Davenport*,  
97 U. S. 369.

(7) Prior to the Act of Congress of April 28, 1904, the courts of the Choctaw and Chickasaw Tribes had exclusive jurisdiction of the probate and administration of estates of citizens of these nations and the appointment and control of guardians for Indian minors.

*In re. Poff's Guardianship*, 103 S. W. 765.

*In re. Feland's Estate*, 26 Okla. 448.

(8) Under the terms of a will giving a guardian general control of the property of a minor, the guardian can sell without an order of court.

*Blount v. Moore*, 54 Ala. 360.

*Cook v. Cook*, 47 Atl. 732.

(9) Persons claiming title adversely to a ward can not contest a sale for irregularities.

*Meikel v. Borders*, 129 Ind. 529.

*Marvin v. Schilling*, 12 Mich. 356.

*Knotts v. Stearns*, 91 U. S. 638.

(10) Actual possession of land is notice to all the world of the possessor's title.

*Jower v. Phelps*, 33 Ark. 465.

*Sisk v. Almon*, 34 Ark. 391.

*Bird v. Jones*, 37 Ark. 195.

*Rockefeller v. Oliver*, 41 Ark. 169.

*Voitter v. Hinde*, 32 U. S. 252.

*Boone v. Childs*, 35 U. S. 177.

*May v. Le Claire*, 78 U. S. 217.

(11) One who purchases *pendente lite* is not an innocent purchaser.

*Henry v. Harrold*, 57 Ark. 573.

*Hargrove v. Cherokee Nation*, 129 Fed. 186.

*Ritchey v. Johnson*, 50 Ark. 551.

*Holman v. Patterson*, 29 Ark. 357.

(12) When a matter has passed to final judgment in a court of competent jurisdiction, it can not be again litigated between the same parties or their privies.

*Pratt v. Ratliff*, 10 Okla. 168.

*Woodworth v. Hennessey*, 32 Okla. 267.

*Oklahoma City v. McMasters*, 12 Okla. 570.

## ARGUMENT

### FIRST PROPOSITION.

The holding of the Department of the Interior on review and decision of the Supreme Court of Oklahoma that the land and improvements in controversy had been abandoned by the guardian and heirs of C. L. Campbell, deceased, and that Blasingame acquired a prior right thereto by his possession taken in February, 1899, was a mistake of law upon the admitted and uncontradicted facts.

The will of C. L. Campbell, deceased, provides in, part as follows:

"I give and bequeath to my wife, S. L. Campbell, and my five minor children my home place known as Hilldrop, bounded on the north by W. B. Bailey and C. M. Kirkland's farms, on the east by John Ireton pasture, on the south by Tom Fletcher's farm and the Washita river, and on the west by James Fitzpatrick and Dan Garland's farms \* \* \* to share the same equally, my wife, S. L. Campbell, to receive a child's part.\* \*

It is my further will that James H. Tuttle, the guardian hereinbefore mentioned shall receive and have full control of all real and personal property hereinbefore provided for and shall be guardian of the person and estate of said minors and shall hold the estate in trust and turn over to the respective minors the pro rata part of the same together with all profits arising therefrom.

"It is my will that this, my last will and testament be probated in the probate court of the Chickasaw Nation, Indian Territory, but should

the probate court of the Chickasaw Nation, by operation of law or otherwise cease to exist, then in that event to be probated in such other court as may be established by law in its stead" (record 144-145).

The Department of the Interior held on review that the guardian and heirs including the minors had abandoned the land and improvements in controversy. The Supreme Court of Oklahoma, in its decision held:

"But it is contended the Secretary entertained an erroneous view of the law when he held that the testimony was sufficient to show an abandonment of the property in controversy after the death of Campbell, and that the continued possession of Blasingame under the bill of sale from Mrs. Campbell from 1899 to 1902 when he conveyed to Brimage was not sufficient to show such abandonment. The law applied by the Secretary was an Act entitled 'An Act defining what shall constitute a claim in the Chickasaw Nation Sec. 6. Be it further enacted that any citizen that abandons a claim for two years, it shall become public domain in the Chickasaw Nation and subject to entry by any citizen of this Nation.' If the Secretary erred, it would seem to show that the widow and heirs of Campbell had a right under his will to convey the land in controversy to Hill, *i' e.*, if the will had any probative force. The Secretary, in effect, held that it did not, but whether he erred or not, under our view of the case, it is not necessary to decide. In considering this assignment, we

are invited to go into the testimony which defendant in error arrays from the record to see whether the Secretary erred in arriving at his conclusion that the land was abandoned. We decline for the reason that the finding of abandonment was a conclusion of fact and not of law and hence is binding on us.

“In holding that the lands were abandoned between 1899 and 1902, the Secretary impliedly held that the Chickasaw statute, *supra*, made no exception as to the Campbell minors, who thereafter attained their majority. This is urged as error on the ground that the facts could not amount to an abandonment as to them. But we are not at all sure that in so holding, the Secretary erred as a matter of law. The statute makes no exception as to minors, but reads: ‘Any citizen who abandons a claim for two years,’ but let that be as it may, the question before him being a mixed question of law and fact, his decision is also binding on us.

“As this finding of fact by the Secretary can not be disturbed, it follows that by abandonment the land became public domain, subject to entry by Blasingame (Record 194-195).”

The evidence on the question of abandonment is as follows:

JAMES H. TUTTLE testified:

“Q. Are you the guardian of the Campbell heirs at this time?

A. All minor heirs I am yes sir. Rex and John.



Q. Do you know where this land is located?

A. It is located on Bitter Creek, six miles east of Chickasha, what is known as the Campbell place.

Q. Did you ever by your deed as guardian of the minor heirs and with the heirs who had reached the age of majority quit claim and convey the land in controversy to Dave Hill?

A. I did.

Q. By what authority are you acting as guardian of these children?

A. Guardianship from the court.

Q. Did C. L. Campbell in his last will and testament ask that you be made guardian for his children?

A. The will so shows, yes, sir.

Q. About what time did C. L. Campbell die?

A. I think he died in October, 1896. He has been dead about eight years.

Q. After his death, who went in possession and control of the estate of his minor heirs, the land?

A. I did.

Q. Did you take possession and control of the land in controversy in this action after his death?

A. I did, yes sir.

Q. How long did you have control and possession of it?

A. I had control and possession of it until I turned it over to the boys.

Q. Who do you mean by the boys?

A. I mean those of age, Holmes, Mont and Lawrence.

Q. Did you turn over any of this land in controversy I am speaking about the land in controversy and not the entire estate?

A. No, I never turned any over. I told Mrs. Campbell to take her teams and work it. She had so many teams—the bottom land. The other part I never did turn over at all.

Q. You never did turn over possession of this land to any one?

A. No, sir.

Q. You always held it for the minor heirs?

A. Yes, sir.

Q. How long did you hold the land after the death of Mr. Campbell—the land in controversy?

A. I think it was about two years before Mrs. Campbell sold it. In fact, I don't know exactly when she did sell it. I did not find it out for several months afterwards.

Q. Did you give her any right or authority to sell the land?

A. No, sir, I did not.

Q. Did the minor heirs ever receive any of the consideration that was paid to her for this land?

A. No, sir, not to my knowledge.

Q. Did you ever deliver the possession of this land to Mr. Blasingame or to Mr. Reynolds?

A. No, sir.

Q. Have you been continuously from that time until now claiming this land for the minor heirs of the Campbell estate?

A. Yes, sir.

Q. Did you ever take any proceedings in court to eject him? (Blasingame) from this land?

A. I employed Holding & Bond to intercede against Mr. Blasingame.

Q. Do you know whether or not these attorneys you employed served notice on Mr. Blasingame to give possession?

A. Yes, sir, they got the notices out and referred them to me.

Q. About how long after Blasingame had taken possession of this land was it before you employed a law firm to have him ejected?

A. I don't know exactly how long. It was right away though. I have no record of it. I went right over there and put the case before them.

Q. Did they promise you they would institute suit?

A. Yes, sir.

Q. Did you ever as guardian for these minor heirs make any deed or grant or bargain

away any part of this land in controversy to any person other than to Dave Hill?

A. No, sir.

Q. Did you ever give any one the right to take these lands in allotment or to file upon the same?

A. No, sir.

Q. How long after Mr. Campbell's death was it before W. L. Sawyer turned this estate over to you?

A. I think it was about four months.

Q. What did he do to turn the estate over to you?

A. Well, he settled up Mr. Campbell's business.

Q. Paid his debts?

A. Yes, sir.

Q. Rented his lands?

A. No, sir, he never rented his lands.

Q. He sold his property?

A. Yes, sir.

Q. And paid up his debts?

A. Yes, sir.

Q. And then told you as guardian to take possession?

A. Yes, sir.

Q. How much land did you take possession of?

A. I don't know how much. I took possession of the whole Campbell place.

Q. Has there ever been any division of this estate?

A. Only as they have come of age.

Q. All of them are now of age with the exception of two?

A. Yes, Rex and John.

Q. This deed that you executed to Dave Hill, Mr. Tuttle, you executed it and signed for the minor's part to him?

A. For Rex and John.

Q. Were Rex and John in possession of their allotments at that time?

A. No, sir, they were not.

Q. Then, it is a fact that after the sale of this land to Blasingame by Mrs. Minter, you did not collect any further rents upon the land that has been contested for?

A. No, sir, I just asked for the rent to be used for the rent to be included in the suit.

Q. You say you arranged for that suit to be brought for the possession of this land?

A. Yes, sir.

Q. Now, Mr. Tuttle, I will ask you if it is not a fact that the land conveyed to Mr. Blasingame and the land that is being contested for here was set aside to Mrs. Campbell as her own separate land and estate?

A. No, sir, it was not.

Q. She was working this land that is being contested for and was leasing the other land at that time?

A. Under my supervision.

Q. The rent was payable to her?

A. I was dividing the leases up and after the thing run about two years—

Q. Is it not a fact that the land contested for was being leased by Mrs. Campbell at the time she sold it to Mr. Blasingame?

A. By me OK'ing the lease.

Q. The lease was made in her name?

A. Her and me together. She only leased it one year.

Q. And you are certain that Mrs. Campbell never approached you in regard to the sale of the land in controversy?

A. Yes, sir, I am most certain.

Q. Do you know who segregated this land in controversy from the public domain?

A. Mr. Campbell did.

Q. Do you know in what year?

A. No, sir, it has been too long. I have been here 27 years.

Q. You never did permit Mrs. Minter to take possession of this land as hers and exercise control over it?

A. No, sir.

Q. Nor to receive the rents or profits from it?

A. No, sir.

Q. You say Mrs. Campbell occupied this land as your tenant?

A. Yes, sir.

Q. Under contract with you?

A. Yes, sir.

Q. Did she pay you rent?

A. Paid her rent in the division of the corn that came off of the place" (Record 62-73).

GEORGE LADD testified:

"Q. Do you know who exercised control and supervision over this land in controversy from the time of Mr. Campbell's death up till the time Mr. Blasingame bought it?

A. Mr. Tuttle was guardian of the estate.

Q. Did Mrs. Campbell hold this land under Mr. Tuttle when she was in possession of it?

A. Yes, sir" (Record 76).

J. W. BLASINGAME testified:

"Q. I will ask you Mr. Blasingame if you were ever in possession and control of the lands being contested for?

A. Yes, sir.

Q. Tell the commission when that was?



A. I came in possession of it January 21, 1899.

Q. From whom did you secure the lands?

A. From Mrs. S. L. Campbell.

Q. Did you receive a written conveyance from her for the lands?

A. Yes, sir, I got a bill of sale.

Q. I will ask you when you purchased this land from Mrs. S. L. Campbell?

A. I bought it on the 21st day of January, 1899.

Q. How long after you had bought it was it until you went into possession of it?

A. It was a month or more than a month.

Q. Did you take complete possession of it at the beginning?

A. I started to take possession of it. A man by the name of Sherwood spoke to me and said he had a lease from Mrs. Campbell.

Q. How did you get him off?

A. She bought him off.

Q. Was he leasing this land at that time?

A. He was.

Q. Do you know from whom?

A. Mrs. Campbell.

Q. What house was Sherwood in?

A. In the house she now lives in, that is, the old Campbell homestead.

Q. What time of the year was it when you secured possession of these premises?

A. Sometime in February, 1899.

Q. At the time you bought this land, did you not know that J. H. Tuttle was guardian for the Campbell heirs?

A. I did not know only what she told me" (Record 77-83).

FRANK PLATO, a witness for Blasingame testified:

"Q. State if you know, Mr. Plato, who was in possession and control of the lands transferred to Mr. Blasingame by Mrs. Camppbell at the time those lands were transferred to Mr. Blasingame?

A. I don't know exactly who was in possession. I know Mrs. Campbell was living on the land.

Q. Do you know Holmes Campbell?

A. Yes, sir.

Q. Do you know where he is living now?

A. He is living with his mother, I suppose, he makes his home with his mother.

Q. Do you know Mrs. S. L. Minter?

A. Yes, sir.

Q. Where is she living at this time?

A. She is living on the the home, her homestead.

Q. The old Campbell place?

A. Yes, sir.

Q. Do you know Rex and John Campbell?

A. Yes, sir.

Q. Do you know where they are living at this time?

A. Yes, sir, staying with their mother, but they have got their home on the old Campbell place.

Q. About how much of the holdings of Mr. Campbell at that time was bottom land, a rough estimate to the best of your knowledge?

A. Something between 2,000 and 2,500 acres was bottom land.

Q. About how much of that land in your judgment was in cultivation?

A. Somewhere in the neighborhood of 1200 or 1500 acres, possibly more, possibly less.

Q. You were acquainted with the home place where he lived?

A. Yes, sir.

Q. This land lying immediately around the house there in cultivation is all bottom land?

A. Yes, sir.

Q. This land in there is all bottom land?

A. All bottom land, yes."

This witness then testified that he acted as agent in the sale of this land to Blasingame and that he was present when the sale was made.

“Q. Was Mr. Blasingame informed about the land held by Mr. Tuttle for these children at the time he made this trade, either by you or by Mrs. Minter?

A. I think that he was because I am satisfied that I told him that Mr. Tuttle, in fact, he knew that Mr. Tuttle was administrator of the estate. Everybody knew that that lived in that country.

Q. Did you hear Mrs. Campbell say anything to Mr. Blasingame about not being able to dispose of the land that is in litigation here without Mr. Tuttle's consent?

A. At that time?

Q. Yes, sir.

A. Not at that time, but I did later on” (Record 88-93).

W. D. BAILEY, witness for Blasingame, testified:

“Q. How long have you been familiar with these lands?

A. I was there before there was ever a fence, before Campbell fenced it.

Q. I will ask you if you know how much in cultivation he was holding at that time?

A. He had in I suppose not under 1200 acres, maybe 1500 acres, I don't know exactly as to the amount of cultivated land he had in, but I suppose about 1200 acres.

Q. Have you been over there since C. L.

Campbell placed a new house on the premises?

A. Since he built a new house, yes.

Q. About what was the value of that new house?

A. He told me it cost him I think \$4500.00.

Q. Are you acquainted with his barn there?

A. Yes, sir.

Q. About what would a barn like that cost?

A. I would suppose that a barn like that would cost—say \$1200.00 or \$1500.00. It was the best barn I ever saw in the Chickasaw nation" (Record 94-96).

R. Boxd testified as a witness for Blasingame:

"Q. I will ask you if you remember during the year 1899 or 1900 Mr. James Tuttle consulting your firm in regard to bringing suit for possession of the land in litigation here?

A. Yes, sir.

Q. I will ask you what was done towards bringing that action?

A. Mr. Tuttle and Dr. Minter came to our office and asked us to bring suit against Mr. Blasingame for possession of the land in controversy in this suit. Holding and I took the case and issued notices to Blasingame and his son, I think, to quit possession, but suit was not instituted.

Q. Nothing further was ever done in it?

A. I think Mr. Tuttle several times asked when the case would come up for trial. Dr. Minter was to furnish the money with which to file the suit. He never did furnish the funds and the suit was never filed and we put Tuttle off from time to time.

Q. This notice you served then was simply the notice to vacate and quit possession or your client would sue?

A. I think that was the notice" (Record 100).

Mrs. S. L. MINTER testified:

"Q. Are the widow of S. L. Campbell, deceased?

A. Yes, sir.

Q. What year did he die?

A. He died in the year 1896.

Q. Did he leave a will?

A. Yes, sir.

Q. Did you accept the terms of that will?

A. Yes, sir.

Q. Did Mr. Tuttle authorize you to or give his consent to your selling a certain peice of land about 600 acres south of the Purcell and Chickasha road?

A. No, sir.

Q. You never had any interest or claim to to it?

A. I had a child's interest.

Q. Mr. Reynolds is now in possession of this land, is he not?

A. I do not know who has possession of it. Mr. Reynolds told me he had possession of it.

Q. Who was in control of the land that you sold to Mr. Blasingame at the time you sold it to him?

A. We held the land together. The estate held it.

Q. Who had the land rented that year?

A. I do not know.

Q. Do you remember Dick Sherwood?

A. Yes, sir.

Q. Was Dick Sherwood on the place?

A. Yes, sir, he was working on the place.

Q. Mr. Sherwood was working that land was he not?

A. He never did work any land.

Q. Did he lease from you?

A. Yes, sir. No, I leased the land to a man named Coleman in Vernon, Texas, and he sub-leased it to Sherwood.

Q. You say, Mrs. Minter, that you had rented this land to Mr. Coleman. Were you in control of this land at this time?

A. There was no land specified when I rented to Mr. Coleman. There had been no land specified in the contract. Mr. Tuttle was in control of all the land.

Q. You made a trade with Mr. Coleman, did you?

A. Yes, sir.



Q. You received the rents from the land that year

A. There was no rents.

Q. After you sold this land to Blasingame, did you ever say anything to Mr. Tuttle about it?

A. I don't remember, I guess we must have talked about it. I did not know how much land I had sold.

Q. You remember the deed that was signed was read to you?

A. I do not know, I thought the lines run north, I do not know anything about the land.

Q. How long after you had sold this land to Mr. Blasingame before you got Sherwood to release his lease to you?

A. It was not very long. I never considered that at all when I was paying Sherwood. I was buying him out to get him off the place. He had possession of a part of the place and I wanted it.

Q. You say there were no rents that year?

A. Yes, sir, there were no rents.

Q. Who got the rents off of this 80 or 65 acres for the years 1896 and 1897?

A. There was no rents at all. It was included in the Campbell estate rents and divided out.

Q. Has there ever been any settlement of that estate, Mrs. Minter? Has there been any final settlement?

A. No, sir.

Q. What were you to get under the terms of the will?

A. I was to get a child's part.

Q. Was there no separate assignment made of that estate?

A. No, sir.

Q. Do you know whether there was any specified assignment made to the children?

A. I do not.

Q. So far as you know the estate is to be divided out equally among you and the children?

A. Yes, sir.

Q. The land was turned over to you and you proceeded to manage it?

A. No, sir he did not turn it over to me.

Q. All the lands that you held were the Campbell estate lands?

A. Yes, sir.

Q. Mr. Tuttle controlled all the lands of the Campbell estate, did he not?

A. Yes, sir. He did all the renting and selling made all the leases and kept the proceeds.

Q. Did they explain to you at the time the deed was read the part of the land that you were selling?

A. No, sir.

Q. Were you on the land when you signed the deed?

A. No, sir, I was in Chickasha.

Q. It was not your intention to transfer all of this land at the time?

A. I do not know how much I did sell him. I did not know anything about it. I did not know how much I was selling.

Q. The location of your home place is immediately adjacent to the land you sold Blasingame?

A. Yes, sir.

Q. At the time you sold this land, Mr. Tuttle as guardian of the Campbell estate was in possession of all the land?

A. Yes, sir, he was in possession of all the land and that that I sold he was in possession of that.

Q. Who was cultivating that 70 or 65 acres of land at the time you sold it?

A. It was cultivated by the Campbell estate.

Q. Whose stock was working that land?

A. The Campbell estate stock.

Q. Had there been a division of the stock at that time?

A. No, sir'' (Record 108-114).

The foregoing is the evidence of all parties with reference to the possession and control of the land in controversy from the time of the

death of C. L. Campbell, deceased, up until the ejectment suit was filed by Hill against Blasingame in November, 1902. There is no conflict in this evidence with reference to the possession and control of the land. It was admitted in the statement of counsel for contestees, defendants in error—that the land in controversy was in the possession of C. L. Campbell at the time of his death; that Campbell left a will in which the home and certain other lands was left to the widow and minor children (Record 153).

Where the facts are admitted or where there is no conflict in the evidence, abandonment is a question of law.

*Paine v. Griffiths*, 86 Fed. 452.

*Wilmore Coal Co. v. Brown*, 147 Fed. 931, affirmed in 153 Fed. 143.

*Grant v. Allison*, 43 Pa. 427.

*Ry. Company v. Wagand*, 32 Sou. 744.

*Lockhart v. Johnson*, 181 U. S. 516.

In *Lockhart v. Johnson*, *supra*, this court had under consideration the question of the forfeiture of a mining claim by a failure to do the necessary work or comply with the laws with reference thereto. The facts were undisputed and the trial court directed a verdict. The judgment was affirmed by this court.

In *Railway Company v. Wagand, supra*, the Supreme Court of Alabama had under consideration the abandonment of personal property. In the opinion the court say:

“The owner of personal property may divest himself of title by abandonment and after doing so he can not maintain trover against one who thereafter assumes the ownership. This can be only where the owner has intended to release his property rights and where the evidence on the point is conflicting or leaves room for contrary inferences, the question of abandonment is for the jury. Here however, the evidence is without conflict and the plaintiff's declarations and conduct above referred to lead solely to the conclusion that the plaintiff both entertained and carried out the intention of abandoning his property in the animal and in view of plaintiff's position, defendant was entitled to have the jury charged upon the assumption that the plaintiff had no interest in the animal when the suit was brought and therefore no right to recover on the second count of the complaint.”

In *Wilmore Coal Company v. Brown, supra*, the court had under consideration the question of an abandonment and in the opinion the court say:

“Ordinarily this is a question of fact to be determined by the circumstances, the intent being largely controlling, but under certain conditions may become a question of law to be determined by the court particularly when the facts are undisputed.”

In *Paine v. Griffiths*, *supra*, the court quoted from *Atchison v. McMurray*, 5 Watts 13, as follows:

“Abandonment is not always a question of intention exclusively for the jury without a controlling instruction from the court. Under an uncontradicted state of facts the law will pronounce the conduct of the party to be an abandonment whatever may have been his intention.”

We submit that under these authorities based upon the admitted facts and uncontradicted evidence in the case abandonment by the guardian and minor heirs was a question of law and applied to the admitted and uncontradicted facts the holding that the lands had been abandoned was a mistake of law. The defendants in error in the contest before the Department of the Interior asserted abandonment and therefore the burden was on them to submit evidence showing an abandonment by the guardian and minor heirs.

*Lindblom v. Rocks*, 146 Fed. 660.

The evidence before the department, admitted and uncontradicted, shows that the guardian and minor heirs asserted their right to the land and improvements in controversy after Blasingame took possession in 1899. This was the evidence introduced by the defendants in error before the

department on the question of abandonment. This evidence, therefore, under the law, does not constitute abandonment.

In *Lindblom v. Rocks*, *supra*, the court say:

“Where immediately on plaintiff’s return to Alaska she asserted claim to a town lot which she had previously located and which was then in the possession of others, her failure to sue to recover possession for four years after her return did not of itself constitute an abandonment.”

The failure to occupy property is not of itself sufficient to show an abandonment.

*Land v. Johnson*, 156 Cal. 253.

*McAlpine v. Ry. Co.*, 68 Kan. 207.

The admitted and uncontradicted evidence shows that in 1899 Blasingame entered into possession of the land and improvements in controversy without the knowledge or consent of the guardian and the minor heirs, and such entry ousted the guardian and minor heirs from the possession held since the death of C. L. Campbell, deceased, and where the person is ousted from possession he cannot be charged with abandonment.

*Lockhart v. Willis*, 9 N. M. 263, 50 Pac. 318.

*Utah Mining Co. v. Dickert Sulphur Co.*,  
21 Pac. 1002.



In *Lockhart v. Willis, supra*, the Supreme Court of New Mexico, in the opinion, say:

“Abandonment cannot be charged against the locator of a claim if, while he is in possession, his claim has been seized by another who holds possession of it adversely to him.”

We contend that there is no evidence in the entire record to support the finding of abandonment as a finding of fact and the rule is that whether there is any evidence to support a finding of fact is a question of law.

*Jordan v. Smith*, 12 Okl. 703.

*Howe et al. v. Parker et al.*, 190 Fed. 738.

In *Howe v. Parker, supra*, the court say:

“Whether or not there is any evidence to sustain a charge, a claim or a finding of fact in a controversy before the Land Department over the title to public land is a question of law, and an error in the decision of that question which results in the issuing of a patent to the wrong party is remedial in equity.”

At the time of the conveyance of the land and improvements to Hill, in October, 1902, two of the Campbell heirs had become of age; one was then about 23, the other about 21 years old. One of the heirs had married and was acting for himself. Two others were still under the guardianship of the

Indian court. The conveyance to Hill was made by these heirs who had attained their majority and by the guardian for the minor heirs. The Department of the Interior and the Supreme Court of Oklahoma held that these heirs had abandoned the right to the land and improvements. The execution of this conveyance was the first act of those heirs, who had attained their majority, with reference to this land and the improvements. This act instead of showing an abandonment is conclusive of the intention to assert a right to the property.

It is suggested in the decision of the Supreme Court of Oklahoma that the Chickasaw statute of abandonment which provides that if a claim be abandoned by any citizen might include minors. We do not think this statute can be so construed. Minors would not be construed as coming within the provisions of the Act unless the Act should expressly so declare. But it would receive the construction as any other statute and the time construed as not including minors. We submit that minors cannot be charged with abandonment.

Woerner on Arministration, 2nd Edition, Volume 1, section 99.

*Fout v. Clark*, 11 L. R.A. 861.

*Gibson v. Herriot*, 17 S. W. 589.

*Western Union Tel. Co. v. Davenport*,  
97 U. S. 369.

In *Western Union Telegraph Company v. Dav-enport*, *supra*, this court in the third paragraph of the syllabus say:

“Minor heirs cannot be precluded from asserting their right to property by reason of any negligence of their guardian.”

In *Gibson v. Herriott*, *supra*, the Supreme Court of Arkansas held that an infant cannot be guilty of laches.

We direct the court's attention to the evidence with reference to abandonment under the provisions of the Chickasaw statute for two years. The statute provides that if any person shall abandon a claim for two years it shall be subject to possession by another citizen. This statute could only mean an abandonment continuing for a period of two years, and that no person can acquire rights to the possession and improvements until after a period of two years from the time of abandonment. Under the evidence undisputed in this case, the will was probated in December, 1896, the guardian took possession of the entire estate including the land and improvements in controversy, about four months afterwards, or in the spring of 1897. Blasingame purchased in January, 1899, and went into possession in February, 1899. During

the years 1896 and 1897 the lands were occupied by the widow and children and the land in controversy was cultivated by them with the teams and property of the estate. Therefore, under this statute, abandonment could not be claimed for two years prior to the time Blasingame took possession. After Blasingame took possession sometime in 1899 notice was served on him to quit and deliver possession of the land. There could have been no abandonment up to that time. Blasingame held adversely to the guardian and the minors and although the guardian did not sue for possession, still his failure to sue did not, under the law, constitute an abandonment. The Chickasaw statute did not contemplate that one could dispossess another of land and improvements and keep the other out of possession for two years and that this would be construed as an abandonment. After Blasingame entered possession and held adversely to the guardian and minor heirs only the statute of limitations for the recovery of possession of real property could bar the guardian's right. This limitation statute was that provided for by the laws of Arkansas at that time in force in the Indian Territory and the period of limitation was seven years. No title to the improvements was ac-

quired by Blasingame by limitation because in 1902 the guardian and heirs conveyed their right to the land and improvements to Hill and Hill instituted ejectment suit against Blasingame. We suggest that one who claims the right to the possession and ownership of property because of abandonment that his right cannot be established unless his possession begins after the complete abandonment of the property by the former owner. Blasingame sought to establish his right to the land and improvements on the ground of abandonment by the guardian and heirs, although his possession was taken at a time when the property was in the possession of the guardian and heirs and being used, occupied and cultivated.

### **SECOND PROPOSITION.**

**The will of C. L. Campbell, deceased, was a muniment of title relied upon by all parties and the Department of the Interior committed error of law in laying this instrument out of the controversy and deciding the contest on other grounds.**

This will was that of an Indian citizen properly executed, witnessed, proved and probated in the Indian court. The instrument introduced in evidence was properly certified to by the officers of the Indian court. The heirs of C. L. Campbell took title to the property under the terms of this will and this title they conveyed to Hill in 1902.

The will, in express terms, gives the land and improvements to the heirs, designates a guardian for the minors, and provides that such guardian shall give bond and qualify according to law, and shall:

“receive and have full control of all real and personal property hereinbefore provided for.”

The will was introduced in evidence at the hearing of the contest, both parties relied upon their right to allot by virtue of the provisions of the will. The will was considered a muniment of title by all parties and the controversy decided with reference thereto by the Commission to the Five Civilized Tribes, the Commissioner of Indian Affairs, and the Secretary of the Interior prior to the decision of the department on review. In the decision on review, the Department say:

“With reference to the bill of sale to Hill in 1902, James H. Tuttle claimed to act for the minors John and Rex Campbell, also, signed this bill of sale, but his act was not authorized or confirmed by any court. Even under the Chickasaw law, it would have been necessary had the Indian probate court been empowered to act to secure the consent of the court. (See Sec. 8, Chickasaw Act of October 12, 1876.) But the power of the tribal judges to act was absolutely taken away by Section 28 of the Act of Congress of June 28, 1898, also referred to above, which abolished the

tribal courts and provided that no officer of such courts should thereafter have any authority whatever to do or perform any act theretofore authorized by law in connection with said courts. If Tuttle had proceeded under the laws of Arkansas, as published in Mansfield's Digest, 1884, it would have been necessary for him to comply with the various provisions therein relative to the duties of guardians, but there is no evidence or even a claim that he did so. It follows that no force can be attached to the bill of sale insofar as it purports to convey the interest of said minors. Moreover, it is necessary to hold in this connection that the copy of the alleged will of Campbell and all matters of court showing the appointment of Tuttle were not properly admitted in evidence for the reason that the same were certified only by an officer of the Indian court. This conclusion is also based on Section 28 of the Act of June 28, 1898."

In the decision of the Supreme Court of Oklahoma, in speaking to the question of abandonment, that court, in the opinion, say:

"If the Secretary erred, it would seem to follow that the widow and heirs of Campbell had a right under his will to convey the land in controversy to Hill, i. e., if the will had any probative force. The Secretary in effect held that it did not, but whether he erred or not, under our view of the case, it is not necessary to decide, and if the secretary was right in laying out of the case the paper title of both sides to the contest, it would be unprofitable to further pursue the inquiry of



whether the Secretary erred in holding that the widow and heirs of Campbell had anything to convey or to consider further the links in the chain of title of either contestants or contestees as defendant in error would have us do by considering what he has to say beginning on page 48 of his brief."

In holding that the Indian courts were abolished by the Act of June 28, 1898, and that the officers of the Indian courts were abolished by the Act of June 28, 1898, and that the officers of the Indian courts were prohibited from performing any acts under the laws of the Chickasaw Nation, the Department of the Interior erred as a matter of law. In the Choctaw and Chickasaw Nations, the Indian courts were not abolished until 1904 and up until that time exercised exclusive jurisdiction and authority in probate matters with reference to Indian estates.

*In re. Poff's guardianship*, 103 S. W. 765.

*In re. Feland estate*, 26 Okl. 448.

*In re. Poff's guardianship, supra*, the Court of Appeals of the Indian Territory held that the Act of Congress of June 28, 1898, which divested the tribal courts of jurisdiction was repealed by the Atoka Agreement insofar as the Act of June 28, 1898, attempted to withdraw probate jurisdiction

from the tribal courts, and that until the Act of April 28, 1904, the tribal courts had exclusive jurisdiction of probate matters with reference to Choctaw and Chickasaw citizens.

*In re Feland's estate, supra*, the Supreme Court of Oklahoma held that the United States courts in the Indian Territory prior to the Act of 1904 had no jurisdiction over the probate of Indian estates. It is clear from these authorities that the Department of the Interior committed error of law in striking the will from the controversy and in attempting to decide the controversy on other grounds which had never been urged or raised by either party. In fact when the Department of the Interior laid out of the controversy the will—the muniment of title—the basis of the right of both parties—it seems to us that in so doing, the Department made it ~~impossible~~ possible to render a just decision on any other ground, for the reason that both parties had relied upon the will.

It is suggested in the decision of the Department of the Interior that the conveyance to Hill by the guardian in October, 1902, not having been approved by the Indian probate court, was invalid and could convey nothing to Hill. We suggest

that the terms and provisions of the will itself authorize the guardian to convey, and in such instances the guardian can convey without an order of court. The guardian had duly qualified according to law. This property was of a character which the guardian ought to have the right to convey under the terms of the will without the order of the probate court. The property consisted of the possessory right and improvements upon real estate, and under the terms of this will we submit that the guardian could convey without an order of the Indian court.

*Blounts v. Moore*, 54 Ala. 360.

*Cook v. Cook*, 47 Atl. 732.

In *Blounts v. Moore*, *supra*, the Supreme Court of Alabama say:

“If a testator having a right to dispose of his real estate directs that it be done by his executor which necessarily implies that the estate is first to be sold a power is given by this implication to the executor to make sale and execute the requisite deed of conveyance. This I understand to be in harmony with the rule adopted in other jurisdictions that if a sale will be given by implication as otherwise purposes of the testator, the power to make the sale will be given by implication as otherwise; the intention of the testator might be defeated.”

In *Cook v. Cook*, 732, 47 Atlantic, the New Jersey Court of Equity say:

“A will devising all the testator’s property, including real estate, to his executor to hold and invest with directions for the payment of one-half of the principal of the estate to a son at a certain time gives to the executor an implied power of sale.”

Regardless of whether or not the guardian secured an order of sale from the county court or that the sale was approved by the county court, the sale was only voidable and the defendants in error, the contestees, could not question the validity of such conveyance, they claiming to be in adverse possession of the property and claiming title adversely to the title of the minors. Persons claiming title adversely to the title of a ward cannot contest a sale for irregularity in the proceedings.

*Meikel v. Borders*, 129 Ind. 529, 29 N. E. 29.

*Marvin v. Shilling*, 12 Mich. 356.

The formalities prescribed for the sale of the property of minors being exclusively for their benefit, they alone can avail themselves of irregularities in the sale of their property.

*Knotts v. Stearns*, 91 U. S. 638.

### THIRD PROPOSITION.

There is no evidence in the record to support the finding of the Department of the Interior that the land in controversy ~~was~~ is public domain of the Chickasaw Nation in February, 1899, when Blasingame entered into possession.

In speaking of the land in controversy in connection with the Campbell farm, the Department of the Interior in its decision on review say:

“The fields referred to above were detached tracts forming no part of a continuous scheme of improvement. Tuttle’s exercise of dominion or control over the lands in controversy seems to have been limited as Blasingame entered into possession of these fields, and even as to them it does not appear that he did more than to request his attorneys to have the rent sued for in the suit which was contemplated in 1899, but never instituted” (Record 47).

The department in the same decision in speaking of certain tracts of land involved in this contest which had never been in the possession of Blasingame or Reynolds or any other person except the Campbell estate and Dave Hill, say:.

“As these small tracts are outlying portions of the old Campbell place, it seems to be necessary in this connection to repeat the ruling heretofore made by the department that while remote tracts even if not highly cultivated or thoroughly subduded may be treated as a part of the farm to which they are appurtenant, and in a contest case be disposed of as an inseparable part of it, but that such outlying tracts together will be held to be the nucleus

of an independent allotment right." *Blakeney v. Bishop*, decided May 31, 1907 (M. 602 A. A. C. 278). (Record 50.)

In determining this controversy as between the Hill claimants and the Reynolds claimants, the department say that the fields and improvements of which Blasingame took possession in 1899 cannot be considered a part of a continuous scheme of improvements and a part of the Campbell estate improved farm, but that small detached tracts of the same character in determining the contest in which they are involved are to be considered a part of the Blasingame farm to which they were appurtenant. We contended that the fields and improvements of which Blasingame took possession in 1899 were a part of the Campbell farm and improvements, and under the rule announced by the department, quoting from *Blakeney v. Bishop*, we insist that our position is correct. The quit claim deed from Mrs. Campbell to Blasingame under which he took possession of the land in controversy described the land as follows:

"Also the following tract or land, to-wit: One section to be taken out of the northwest corner of the herein tract of land, beginning on the east bank of West Bitter Creek about one hundred yards south of the Chickasha and Purcell road, thence south one mile, thence

east one mile, thence north one mile, thence west one mile to the place of beginning, with all improvements thereon and right of possession."

This description includes 640 acres of land, and includes a house and improvements, as shown by the evidence, but when Blasingame went to take possession he only took possession of about 480 acres and made no attempt to take possession of the house which was a part of the improvements on the land purchased and described in the quit claim deed. The evidence as to improvements on the land at the time Blasingame took possession is as follows:

J. H. TUTTLE testified:

"Q. What improvements, Mr. Tuttle, were on the land in controversy here and claimed to have been sold by Mrs. Minter to Mr. Blasingame? What improvements were on that land at the time Blasingame took possession of it?

A. There was about 70 acres broke out and a four-wire fence and one house situated on it, a tenant house.

Q. Where was that house?

A. On the south end of it.

Q. Across the creek?

A. Yes, across the creek.

Q. Is that house there now?



A. Yes, sir.

Q. Which side of the creek do you speak of now, the creek that runs south and turns east?

A. It is set right on the south bank where it turns east.

Q. You understand that the land on which that house is situated across the creek is not in contest—do you understand the lands being contested for here?

A. It is the land in the forks of the creek.

Q. Take that map, please, and show us what land are being contested for. I will ask you again now, remembering that that 80 acres is not being contested for, what improvements were on the land purchased by Mr. Blasingame from Mrs. Minter at the time he purchased this land?

A. When Blasingame got that land, there was one outside fence running around this pasture. Inside that pasture there was 70 or 75 acres under a four-wire fence and under cultivation.

Q. Was that all the improvements on the land that is now being contested for at the time Mr. Blasingame got it?

A. I told you there was an extreme outside fence went around it and then a fence ran down the creek and around inside this house. Inside that pasture there was 70 or 75 acres under the four-wire fence broke out.

Q. Then that 70 or 75 acres with this outside fence constituted all the improvements on

the land now in contest at the time Mr. Blasingame got it?

A. No; this outside fence just come on the outside of the creek.

Q. I am asking you about the land now in contest?

A. That is in contest.

Q. I want to know what improvements were on this land at the time Mr. Blasingame bought it, the same land that is now being contested for here?

A. Do you mean to eliminate that 80 acres?

Q. Yes, sir, for that land is not being contested for.

A. The house on that 80 acres was part of the improvements" (Record 67-68).

GEORGE LADD testified:

"Q. Do you know what improvements were on this land at the time Mr. Blasingame took possession?

A. There was a four-wire fence around the pasture and the farm, 75 acres fenced inside of the pasture and 12 acres in one field, and 75 acres in another broke land" (Record 76).

J. W. BLASINGAME testified:

"Q. At the time you purchased this land from Mrs. Campbell, what improvements were on the land?

A. There was a little bit of it, a piece of land on the east side of West Bitter, maybe

10 or 12 acres, and down further towards Mrs. Campbell's house probably 60 or 70 acres.

Q. That was fenced off from the pasture?

A. Yes, sir.

Q. Do you know if it was in cultivation?

A. It was broke up; a fellow had tried to cultivate it that year, but he did not make anything. I don't think he plowed it at all.

Q. Was that all the improvements on it?

A. Yes, sir (Record 79).

Q. Describe the land that is in contest here as purchased by you from Mrs. Campbell?

A. There was one little piece of ground east of West Bitter, 10 or 12 acres broke out, and then the other field was 60 or 70 acres; in other words, the beginning corner that this bill of sale calls for, south of the Purcell road and east of West Bitter, was a little field of 10 or 12 acres. Right about a quarter from that field was another little field, and along the east line of my line on that section was 60 or 70 acres broke out and fenced off to itself. Between these two fields there was elm grubs and small thickets" (Record 80).

W. D. BAILEY testified:

"Q. Tell the commission what was the condition and the amount of improvements on this land at that time?

A. I never measured the land, but I suppose in the two patches of land there was about

73 acres. Maybe more or less broke land. There was a little patch over on the creek close to a dugout and further towards Mrs. Campbell's house.

Q. This land in controversy here is part of the old Campbell land?

A. Part of the old Campbell estate, the land he owned" (Record 94).

The admitted facts and uncontradicted evidence shows that the land in controversy was a part of the Campbell farm in the possession of C. L. Campbell at the time of his death, and occupied and cultivated by the heirs after his death up until the time Blasingame entered into possession and fenced the land off from the balance of the Campbell farm. We submit that there is no evidence to support the finding that the land was public domain in February, 1899, when Blasingame took possession. On the contrary, the land was improved, a part of the Campbell farm, occupied, used and cultivated. Blasingame purchased from Mrs. Campbell and in his quit claim deed described all improvements on the land. This included the land in cultivation, the fences and also the house, but when he took possession he did not attempt to dispossess the tenant in the house, but took possession of only about 480 acres of the land, when his quit claim deed described 640 acres. The im-

provement plat in evidence before the department in the trial of the contest and before the trial court in these cases shows that the land in controversy extends to the half-section line in section 33; that the Campbell home place and the house where he lived ~~at~~, where his family has always lived, is about one-fourth of a mile east of the east line of the land in controversy.

Some suggestion is made in the decision of the department on review as to the heirs of Campbell being excessive holders of land under the provisions of the Act of Congress approved July 1, 1902, known as the supplemental agreement with the Choctaw and Chickasaw Nations. This act, which was ratified by the Choctaw and Chickasaw Nations on September 25, 1902, provides that after the ratification, it shall be unlawful for any member of these tribes to enclose or hold possession of more land in value than that of 320 acres of the average allottable land as provided by the terms of such act, either for himself, or for his wife or for each of his minor children, members of the tribe.

The act further provides that if citizens shall hold more land than therein provided after 90 days from September 25, 1902, any other citizen may file proceedings with the Commission to the Five Civ-

ilized Tribes, and if upon a hearing it is shown a citizen's holding more land than they are entitled to under the act, the citizen filing the proceedings may be permitted to allot from such holdings. This land was conveyed by the Campbell estate to Hill before the expiration of the 90 day period, when, under the act, the heirs of Campbell had a right to convey. The procedure with reference to excessive holdings of land by citizens under the provisions of such act is not involved in this case. The procedure was not followed and no question was raised with reference to such matter. There is no evidence in this record as to the amount of land that the Campbell heirs or estate was holding in 1902 or subsequent to that time, but all the evidence in the record as to the amount of land of the Campbell estate is as of the date C. L. Campbell died in 1896.

Section 11 of such act provides that an allotment of the members of the Choctaw and Chickasaw Nation shall be lands equal in value to 320 acres of the average allottable land of these nations. This is the first declaration defining what shall constitute an allotment to the members of the Choctaw and Chickasaw Nations and therefore prior to 90 days after September 25, 1902, there was no provision of law with reference to the amount of

land which any citizen of these nations might hold in possession for the use of himself or family and his right to so hold lands improved and used was recognized by the Choctaw and Chickasaw tribes and by the Department of the Interior and the courts in the Indian Territory. J. H. Tuttle, guardian, and H. C. Campbell, grantors of Hill, were at all times in possession of the north half of southeast quarter of section 32, a portion of the lands in controversy and involved in the contest of Harry F. Hill. They were in possession at the time of the quit claim deed to Hill in October, 1902, and Hill entered into possession of such land and the improvements thereon, and has ever since held the possession of such land, and even if the position of the Department that the lands were abandoned by the Campbell estate and was public domain is correct, then H. C. Campbell, a citizen of the Choctaw Nation, was in possession conveyed to Hill, and Hill acquired a prior right to this 80 acres of land for the allotment of his minor children.

DAVE HILL testified:

"Q. What part of it are you in possession of?

A. I am in possession of the north half of southeast quarter of section 32. I am in possession of 12 or 15 acres in the northwest quarter of section 33, and in pos-



session of 12 or 15 acres in the north-east quarter of section 32 in the southwest corner.

Q. That little strip there is just the land that is west of the creek? Are you in possession of all that is below the creek there?

A. Yes, sir; about 12 or 15 acres in each piece.

Q. How did you get possession?

A. It was turned over to me by Holmes and Mont Campbell."

C. A. REYNOLDS testified:

"Q. Yesterday, Mr. Reynolds, you heard Mr. Hill testify that he had 80 acres of land that he claimed to be in possession of was fenced off by Mont and Holmes Campbell. You heard him testify to that fact, did you not?

A. Yes, sir.

Q. I will ask you when, to your knowledge, Mr. Hill asserted any claim to that land?

A. I do not understand the question.

Q. Do you know when that fence was constructed there?

A. It was before I bought the place.

Q. I will ask you who was in possession of that land?

A. Mr. Hill."

This testimony shows conclusively that as to

this 80 acres of land neither Reynolds nor his heirs were ever in possession or control of it.

#### **FOURTH PROPOSITION.**

**Neither Blasingame nor Reynolds were bona fide innocent purchasers of the possessory right to the land and improvements.**

When Blasingame purchased the land from Mrs. Campbell and took possession of the improvements he knew that the land was a part of the Campbell farm segregated from the public domain by C. L. Campbell, deceased, and since his death occupied and cultivated by the heirs. He knew at such time that Tuttle was the guardian of the minors and had at all times prior thereto since Campbell's death been in possession and control of the land and was in possession at the time Blasingame purchased. Blasingame testified that one Sherwood had the land rented at the time he (Blasingame) purchased and attempted to take possession. This was actual notice to Blasingame of the rights of the guardian and the heirs of Campbell estate to the possession and improvements and he was charged with the knowledge of such rights. He purchased by quit claim deed and therefore can not claim the protection of a *bona fide* purchaser. He can claim no better right than that of his grantor, Mrs. Campbell.

*Vattier v. Hinde*, 32 U. S. 252.

*Boone v. Childs*, 35 U. S. 177.

*May v. Leclaire*, 78 U. S. 217.

*Sisk v. Almon*, 34 Ark. 391.

*Bird v. Jones*, 37 Ark. 195.

*Rockefeller v. Oliver*, 41 Ark. 169.

In *Sisk v. Almon*, *supra*, the Supreme Court of Arkansas held that actual possession of land at the time of another's purchase is sufficient to put him upon inquiry of the possessor's title.

In *Jower v. Phelps*, 33 Ark. 645, the Supreme Court of Arkansas say:

“Actual possession of land is notice to all the world of the possessor's title.”

Under these authorities and the facts as shown by the record, Blasingame could not be an innocent purchaser of the possessory right and improvements on these lands.

Reynolds stands in no better position than Blasingame. He attempted to purchase from Blasingame's grantee, Brimage, by an assignment from Brimage and acquired his possession from Blasingame in February, 1903. At the time he purchased this assignment from Brimage, the ejectment suit of *Hill v. Blasingame* was pending in the United States Court for the Southern District of the Indian Territory at Chickasha, summons had been

served and Reynolds at that time had actual notice of the suit, and knew of the Hill's claims. Under these circumstances, he took whatever right he acquired with notice of the action and claims of Hill and he could acquire no better right of title than Blasingame had.

*Henry v. Harrold*, 57 Ark. 573.

*Merrick v. Hutt*, 15 Ark. 344.

*Holman v. Patterson*, 29 Ark. 357.

*Richey v. Johnson*, 50 Ark. 551.

*Hargrave v. Cherokee Nation*, 129 Fed. 186.

In *Henry v. Harrold*, *supra*, the Supreme Court of Arkansas held:

“One who purchases *pendente lite* is not an innocent purchaser.”

In *Merrick v. Hutt*, *supra*, the Supreme Court of Arkansas held:

“A sale and conveyance of land *pendente lite* in this state is not void. The vendee in such case takes the interest conveyed subject to every defense against their vendor and hold it precisely as he held it in every respect as to other persons.”

In *Holman v. Patterson*, *supra*, the Supreme Court of Arkansas held:

“A purchaser *pendente lite* will be bound by the result.”

In *Hargrave v. Cherokee Nation*, *supra*, it is

held that this rule applies to members of the Indian tribes in the Indian Territory claiming the right to possession and ownership of improvements on Indian lands.

#### FIFTH PROPOSITION.

Reynolds having purchased the possessory right and improvements of the land in controversy while the ejectment suit of Hill vs. Blasingame was pending in the United States Court and with actual knowledge of such suit and the action of Hill and having appeared in such action as a voluntary defendant and defended therein and the judgment in said cause having determined that when the suit was instituted in 1902 Hill was entitled to the possession of the land, such judgment is conclusive upon the parties here, they being privies of Reynolds.

After Reynolds purchased from Brimage in 1903, he filed his answer as a voluntary defendant in the ejectment suit between Hill and Blasingame and defended in that cause on the ground that he was the owner of the improvements and entitled to the possession of the land for the purpose of allotments for himself and children. On April 23, 1908, the cause was finally tried and the judgment in such cause was that Hill recover the possession of the land from the defendants Blasingame and Reynolds and rents thereon (Record 181-182). From this judgment Reynolds appealed to the Supreme Court of the State of Oklahoma and the judgment was affirmed, mandate issued and on the 24th day of

March, 1911, execution for the possession of the land was issued and Hill was placed in possession under such execution (Record 183-184).

In this ejectment suit, Hill relied upon his right to the possession of the land by reason of his purchase from the guardian and heirs of the Campbell estate. Reynolds relied upon his right to the land and improvements by reason of ~~his~~<sup>the</sup> purchase from Mrs. Campbell and his possession acquired from Blasingame in 1903. The instructions of the trial court clearly defined the issues involved in the case (Record 187-190).

This being an ejectment suit, the plaintiff could recover only upon the strength of his own title, and this question was decided by the judgment.

*Hurst v. Sawyer*, 2 Okl. 470.

*Meyers v. Mathis*, 46 S. W. 178.

Therefore, in this ejectment action, the right to the possession of the land in controversy in November, 1902, was an issue and was decided, determined conclusively in favor of Hill. The right to possession was based upon the ownership of the improvements. The Reynolds children, defendants in error here, claimed the right to allot because of

their father's right to possession. They claim no right to the land unless the father owned the improvements and was entitled to possession. This is the basis of their claim. And that claim has been conclusively adjudicated against them by the judgment in the ejectment case of *Hill v. Blasingame and Reynolds*.

In *Pratt v. Ratliff*, 10 Okl. 168, it is held that when a matter has once passed to final judgment in a court of competent jurisdiction, it is *res adjudicata* and the same matter between the same parties and their privies can not be re-opened or subsequently considered.

*Woodworth v. Hennessy*, 32 Okl. 267.  
*Oklahoma City v. McMasters*, 12 Okl.  
570.

The Reynolds children, defendants in error here, are privies to the judgment because they base their right to allot the land upon the right of their father, C. A. Reynolds, to possession by reason of the ownership of the improvements. They claim to have succeeded to his right to the possession and ownership of the improvements on the land subsequent to the institution of the ejectment suit in 1902. All persons are privies to a judgment who succeed to the rights of property



thereby adjudicated or fixed when derived through or under one of the parties to the action subsequent to the commencement of the suit.

23 Cyc. 1263, and cases cited.

We respectfully submit that the decision of the Supreme Court of Oklahoma should be reversed and that the judgment of the trial court in this case should be affirmed.

C. B. STUART,  
ALGER MELTON,  
REFORD BOND,  
*Counsel for Plaintiffs in Error.*



In the  
**Supreme Court of the United States**  
October Term, 1916

---

Harry F. Hill, a minor, and J. B. Hill, a  
minor, by their next friend and legal  
guardian, Dave Hill; and Lewis James,  
by his legal guardian,

*Plaintiffs in Error,*

vs.

Frank Reynolds, and other minors,

*Defendants in Error.*

No. 61

---

**BRIEF ON BEHALF OF DEFENDANTS IN ERROR**

---

**STATEMENT OF FACTS**

The material question which was in issue before the Secretary of the Interior when the matter was before that department, was as to who was the rightful owner of the improvements situated on the lands involved. This question was a controverted question of fact and the Secretary decided it in favor of the contestees.

In consideration of the above question for determina-

tion, the question of abandonment on the part of the contestants arose, which also became a material question to be determined by the Secretary of the Interior in order to properly decide the main question involved as to who was rightfully entitled to take the land in allotment. Both of these questions were controverted questions of fact.

Substantially stated, the Secretary found that C. L. Campbell died in 1906. That at the date of his death he had possession and control of a large body of land consisting of some fifteen thousand (15,000) acres, about fifteen hundred acres of which was in a state of cultivation, and the balance unimproved and unoccupied save and except surrounded by a fence, and theretofore used for pasture. That Campbell attempted to dispose of this land prior to his death by will, which will the Secretary of the Interior held, first, to be ineffectual to pass title to the land or the right to allot the same; second, that the said will was not properly authenticated to entitle it to be received as evidence, and, third, that the land having been abandoned by the contestants, the validity of the will was immaterial. The Secretary further found as a matter of fact that the contestees' predecessor in interest, Blasingame, in 1909, by permission of the widow of C. L. Campbell, who was left in possession and control of this land, took possession of the land in controversy, and that at the time he took possession it was wild, unimproved land, with the exception of a small area or two having been theretofore partially placed in cultivation. That Blasingame placed practically all the land in a state of cultivation, and placed other valuable improvements thereon, which he estimated the approximate value to be \$2500.00. The contestees, through their father, purchased the improvements and possessory rights from Brimage, a recognized member of the Choctaw Tribe of Indians, and that Reynolds succeeded to all the rights, both to the title of the improvements and the right of possession theretofore owned by Blasingame. That Blasingame claimed to be a member by blood of the Choctaw Tribe of Indians and had

been so decreed to be by the United States Court within and for the Central District of the Indian Territory, and that he sold his possessory right and ownership of improvements prior to the final determination of his right to citizenship. The issue determined by the Secretary of the Interior, in his own language, as contained in his opinion, was as follows:

“Contestants claim these lands by reason of priority of possession and ownership of improvements. Contrary to this, the contestees rely upon priority of application in addition thereto, and claim a better title to the improvements and a greater right to the possession of the land than their opponents.”

Counsel for plaintiffs in error have copied certain provisions of the Act of Congress relating to the allotment of the lands in the Chickasaw and Choctaw Nations, and in addition to the provisions copied by them, we copy other material provisions, as follows:

Section 21 of the Chickasaw and Choctaw Supplemental Agreement, ratified September 25, 1902, Volume 1, Indian Treaties (30 Statute L.), as follows:

“Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine all matters relating to the allotment of land.”

Section 69, page 786, of the same volume, reads as follows:

“All controversies arising between members as to their right to select particular tracts of land shall be determined by the commission to the Five Civilized Tribes.”

A portion of the provision of the Atoka Agreement, 30 Stat. L., p. 506. reads:

“That each member of the Choctaw and Chickasaw Tribes, including Choctaw and Chickasaw freedmen,

shall, where it is possible, have the right to take his allotment on land the improvements on which belong to him, and such improvements shall not be estimated in the value of his allotment."

And, again, in the same volume, on page 495, after providing for allotment to the members of the Chickasaw and Choctaw Tribes and to the Chickasaw and Choctaw freedmen, is as follows:

"To conform as nearly as may be, to the areas and boundaries established by the Government Survey, which land may be selected by each allottee so as to include his improvements."

Section 17 of the Act of Congress approved June 28, 1898, chapter 517, 30 Stat. L. 501, reads:

"It shall be unlawful for any citizen of any one of said tribes to enclose or in any manner by improvements or through another, directly or indirectly, to hold possession of any greater amount of land or other property belonging to any such nation or tribe than that which would be his approximate share of the land belonging to such nation or tribe, and that of his wife and minor children as per allotment herein provided; and any person found in any such possession of land or other property in excess of his share and that of his family, or having the same in any manner enclosed after the expiration of nine months from the passage of this Act shall be deemed guilty of a misdemeanor."

Section 26 of the Act of June 28, 1898, 30 Stat. L., provides:

"On and after the first day of July, 1898, all tribal courts in the Indian Territory shall be abolished and no officer in said court shall thereafter have any authority whatever to do or perform any act theretofore authorized under the law in connection with said court,

or receive any pay for same, and all civil and criminal cases now pending in any of said courts shall be transferred to the United States court in said territory by filing with the clerk of the court the original papers in the suit, provided that this section shall not be enforced as to the Chickasaw and Choctaw or Creek Tribes or Nations, until the first day of October, 1898."

### ARGUMENT

The contestants, plaintiffs in error, base their right and title to the land exclusively under the will of C. L. Campbell, who died in 1896 and prior to any Act of Congress providing for a disposition of the lands of these tribes. While, on the other hand, the contestees, or defendants in error, base their claim by virtue of the ownership of the improvements, prior possession and a superior equity, as well as prior selection of the land in allotment.

Counsel's first contention, on page 16 of their brief, is that the Land Department, as well as the Supreme Court of Oklahoma, erred in holding that the land and improvements had been abandoned by the guardian and heirs of C. L. Campbell, deceased; and in holding that Blasingame acquired a prior right by possession taken in February, 1899. The first point made under this proposition by counsel is that where the facts are admitted or where there is no conflict in the evidence, abandonment is a question of law; and several cases are cited to sustain this contention. The cases cited by counsel hold, as a general proposition, that the question of abandonment ordinarily involves a question of intent, and that usually a question of intent is a question of fact to be determined by the jury; but the decisions recognize an exception to this rule and hold in a general way that the question of abandonment may be reduced to a legal question where all the facts are admitted and the acts and conduct of the party charged with the



abandonment could be explained on no other hypothesis except that of an intent to abandon. We are clearly of the opinion, however, that these authorities are not applicable to the situation now before the Court. There was sufficient testimony tending to show an intent on the part of the guardian and the heirs to abandon the land in controversy; or, in other words, to show an intent to acquiesce in the sale and quit-claim of the possession and improvements by the widow of C. L. Campbell, deceased, to Blasingame, making the question one of fact instead of one of law. The facts bring the case squarely within the rule of this Court in the case of *Lee v. Johnson*, 116 U. S. 48. The Court, after referring to the testimony before the Land Department, said:

“They considered whether his entry was made to acquire a home for himself or for his son-in-law, whether his residence had been sufficient personally, and continuous to save and perfect any right, if, in fact, he had ever initiated any, and *whether or not he had abandoned the land*. The findings of the Secretary upon any of these matters must be taken as conclusive in the absence of any fraud and imposition such as we have mentioned.” (Italics ours.)

The question of abandonment most usually involves an intent and especially is this true where a party is charged with the abandonment of some right or remedy and when the question of intent is the question before the court, it is nearly, if not quite, always a question of fact.

40 Cyc., page 261, lays down the rule as follows:

“There can be no waiver unless so intended by one party and so understood by the other, or one party has so acted as to mislead the other and is estopped thereby. Since intent is an operation of the mind, it should be proven and found as a fact and is rarely to be inferred as a matter of law.”

In the case of *Pence v. Langdon*, 99 U. S. 578, this Court, speaking through Mr. Justice Swayne, said:

*“Acquiescence and waiver are always questions of fact.”* (Italics ours.)

Directly and indirectly sustaining this proposition, we cite the following:

*Ward v. Metropolitan Life Ins. Co.*, 66 Conn. 227.

*Hartford First Natl. Bank v. Hartford Life Ins. Co.*, 45 Conn. 22.

*Fox v. Harding*, 7 Cush. (Mass.) 516.

*Robinson v. Pa. Fire Ins. Co.*, 90 Maine 385.

*Murman v. Wissler*, 116 Mo. App. 397.

So, there can be no doubt but as a general rule the question of abandonment and acquiescence involves a question of intent, and the question of intent necessarily involves a question of fact.

While it is true there are cases where the conduct of a party indicating intent to abandon or acquiescence or to waive a right may be so conclusively inconsistent with a purpose to stand upon such right, as to leave no room for a reasonable inference to the contrary. In such cases, the issue would perhaps be reduced to a question of law.

If the facts and circumstances did not create purely an issue of fact to be determined by the Land Department, it certainly was a mixed question of law and fact and the decision of the Secretary on either is conclusive upon the courts. In the case of *Marquez v. Frisbie*, 101 U. S. 473, it is stated:

“Even where there is a mixed question of law and fact and the court cannot so separate them as to say clearly where the mistake of law is, the decision of a tribunal to which the law has confided the matter, is conclusive.”

*Potter v. Hall*, 189 U. S. 292.

*Quinby v. Conlan*, 104 U. S. 420.

It is further asserted under this proposition that

minors cannot lose their right to property or be divested of title by negligent acts of their guardian. As to whether or not this contention, as an abstract proposition of law, is sound, is not necessary now to be determined.

There is a marked distinction between the question of a guardian and his minors being divested of property rights on the grounds of abandonment or through negligent acts and the question of their failure to do acts necessary to acquire rights in public property. Certainly, neither the guardian nor the minors had any vested rights in this particular property until they had complied with the provisions of the allotment act entitling them to take the lands in allotment. They owned no improvements situated on the lands in controversy, but, as found by the Secretary of the Interior, from the facts and circumstances, the land at the time Blasingame reduced the same to his possession was public domain of the Chickasaw and Choctaw Nations. In fact, they were at that time prohibited from continuing in possession of the same by an Act of Congress which made it a misdemeanor.

The second proposition relied on by counsel is to the effect that the will of C. L. Campbell was a muniment of title relied upon by all parties and the department committed error in laying this instrument out of the controversy and deciding the contest on other grounds.

It is argued by counsel that this will was made by an Indian citizen. This is incorrect. The Department held that there was not sufficient evidence in the record to show that C. L. Campbell, prior to his death, had complied with the laws of the tribe and of Congress entitling him to rights of citizenship. It is true he married into the tribe, but he could not be properly designated a member of the tribe unless he had married according to the laws of the tribe entitling him to citizenship under those laws and the Acts of Congress. But even had Campbell been an Indian and had the will been admitted in evidence and considered by the

Department, notwithstanding these facts, contestants would not have been entitled to recover. Campbell could not subvert the will of Congress by an attempt to control the allotment of the public property of the Chickasaw and Choctaw Nations. He had no such rights in the property as would pass under the will.

Counsel is further in error in asserting that the contestees claim under this will. The record shows that the will was received in evidence by the contesting official, over the objection of counsel for contestees. That said contestees have from the beginning contended that the will was ineffective to pass any interest whatever in the lands in controversy. Counsel evidently assume that because the contestees relied upon a bill of sale from the widow of C. L. Campbell, deceased, to the extent of showing her consent to Blasingame's possession, that they necessarily claimed under the will. In this conclusion, however, counsel are in error. It was the contention of counsel for contestees during the contest, and is now, that the widow was left in the possession and control of this property. That she relinquished her right of possession and control for a valuable consideration to Blasingame, at that time a recognized member of the tribe. That Campbell's other heirs and their guardian acquiesced in this possession and in the acts of the widow in relinquishing her control to Blasingame. That Blasingame secured the peaceful and lawful possession of the land and while in possession erected permanent and substantial improvements thereon, and through this source and by these acts became the owner of the improvements and possessory right within the purview of the Act of Congress. The Secretary held that the will was erroneously received in evidence for the reason it had not been authenticated by any officer authorized to perform official acts at the time, basing his conclusion evidently under Section 26 of the Act of June 28, 1898, *supra*. This Court, in the case of *George W. Choate v. M. E. Trapp, Secretary*, found in 224 U. S. 655, L. C. P., book 56, page 941, speaking through Mr. Justice Lamar, said:

“On April 23, 1897, the Dawes Commission, under the Choctaw representatives, made what is known as the Atoka Agreement. It was incorporated bodily in the Curtis Act of June 28, 1898 (30 St. L. 505), and was modified by the Act of July, 1902 (30 Stat. 657). These two Acts, containing what is known as the Atoka Agreement and the Supplemental Agreement, provided that Indian laws and courts should be at once abolished, etc.”

The courts cannot review the decisions of the Secretary of the Interior in disposing of the public lands and in contested proceedings before them, because they may admit in evidence incompetent testimony or may commit error in ruling out competent testimony.

*Weisman v. Eastman*, 57 Pac. 398.

*Parsons v. Venzke*, *supra*.

*Shepley v. Cowan*, 91 U. S. 424.

In the latter case, this Court said:

“But for mere errors of judgment upon the weight of evidence in the contested case before them, the only remedy is by appeal from one officer to another of the department; and, perhaps, under special circumstances, to the president.”

*Baldwin v. Starks*, 107 U. S. 463.

But the Secretary of the Interior went further, and likewise the Supreme Court of Oklahoma, holding that the will was inoperative to convey title or to control the allotment of the lands in question. It will be remembered that the record shows that Campbell died in possession of about twelve to fifteen thousand acres of the public domain of the Chickasaw and Choctaw Nations, about fifteen hundred acres of which had been reduced to cultivation, the balance constituting large pastures; all of which lands, both improved and unimproved, he undertook to dispose of by the will in question. The Secretary on this point said:

“These lands were once a part of a much larger tract known as the C. L. Campbell farm, which embraced twelve thousand to fifteen thousand acres in the Chickasaw Nation, and extending over a considerable portion of the adjacent and nearby sections. Campbell, a white man, having married a woman of part Indian blood, occupied or claimed these lands for a number of years prior to his death, which occurred in 1896. He used the major portion of the land for grazing and reduced some twelve hundred acres or fifteen hundred acres to cultivation.”

The members of the Chickasaw and Choctaw Tribes of Indians had no interest in the lands of those tribes which would pass under a will or under any other from of conveyance prior to taking the same in allotment. Neither did any of said members have such interest in the possessory right or improvements situated upon any of the land as would constitute a vested right, except so far as such right was recognized by the Acts of Congress and then not until the provisions of the law had been fully complied with.

*Leahy v. Indian Terr. Illuminating Oil Co.*, 39 Okl. 312, 135 Pac. 416.

*Casey v. Bingham*, 37 Okl. 484.

*Cochran v. Hocker*, 34 Okl. 233, 124 Pac. Rep. 953.

*Franklin v. Lynch*, 233 U. S. 267.

*Hayes v. Barringer*, 168 Fed. 221, 93 C. C. A. 507.

*U. S. v. Aaron et al.*, 83 Fed. 347.

*Barnett v. Way*, 29 Okl. 780.

*Lone Wolf v. Hitchcock*, 187 U. S. 553.

*Wallace v. Adams*, 204 U. S. 415.

*Cherokee Nation v. Hitchcock*, 187 U. S. 294.

*Sac & Fox Indians v. Sac & Fox Indians*, 220 U. S. 481.

*Fleming v. McCurtain*, 215 U. S. 56.

*Jones v. Mehan*, 175 U. S. 18.

*Sanders v. Sanders*, 28 Okl. 59.

This proposition being established, it necessarily follows that an individual member of the tribe was without power to vest any title or right by a will or to in any way control or affect the right of the Government in the division and allotment of the lands in question. Certainly, a non-citizen of the tribe, as was Campbell, long prior to the time any Act of Congress had become effective providing for the allotment of these lands, could not by a will or any other instrument vest any title in individual members of the tribe to either the land or the improvements. Neither could he control the disposition or the allotment of same. If this contention is sound, then it must follow that neither the Secretary of the Interior nor the Supreme Court of Oklahoma committed error in laying the will out of the case and, in effect, holding it to be ineffectual to vest title.

The third proposition argued by counsel is to the effect that the evidence does not support the findings of the Land Department wherein the Secretary held that the lands in controversy were public domain of the Chickasaw Nation, in February, 1899, when Blasingame entered into possession.

Under the Atoka Agreement and Curtis Act of June 28, 1898, making excessive holdings illegal and fixing a penalty, the larger part of the holdings by the widow and heirs of C. L. Campbell must have, of necessity, been declared to be a part of the public domain. In fact, the purpose of Congress in declaring such holdings to be illegal was to require such parties guilty of the offense to relinquish their claims to such lands, thereby making it public domain. On this point, the Secretary of the Interior stated:

“Nor should it be overlooked that save the conveyance of Mrs. Campbell in 1899 to Blasingame, it does not appear that any attempt was made by Tuttle or members of the Campbell family to comply with that portion of the Act of June 28, 1898, *supra*, making excessive holding illegal and providing a penalty therefor. From and after the expiration of the nine months al-



lowed Indian citizens under the Act to dispose of such holdings, it was unlawful for them to hold more than their approximate share of the tribal lands. True, the said Act of July 1, 1902, did give an extension of ninety days beginning with September 25, 1902, to dispose of excessive holdings in order to protect owners of bona fide improvements, but it was certainly not intended to permit Indian citizens to revive and re-assert claims long dormant, after others had entered into possession of and having improved the lands once claimed by them."

In the very nature of things, large tracts of land formerly held contrary to law could not be held otherwise than to be a part of the public domain.

Under this contention counsel contend that the plaintiff in error was in possession of eighty acres of the land in controversy which has never been in possession of defendants in error. This contention of counsel, however, is not borne out by the evidence; quoting from the testimony of Dave Hill, as follows:

"Q. When you went up there in that section three years ago, who at that time was in control of the lands that are now in litigation here?

A. Blasingame.

Q. J. W. Blasingame?

A. Yes, sir, I think he was.

\* \* \* \* \*

Q. Who was in possession of this land at that time?

A. I suppose J. W. Blasingame was in possession of it.

\* \* \* \* \*

Q. Have you ever put any improvements on that place?

A. I have not.

Q. Have you ever received any rents off of that place?

A. I have not."

Quoting from the testimony of J. W. Blasingame:

"Q. Are you acquainted with the eighty acres of land,

a part of the land that is now contested for here; that has been enclosed by a fence and claimed by Mr. Hill?

A. Yes, sir.

Q. I will ask you if at the time you purchased the land from Mrs. Campbell you also took possession of that land?

A. I certainly did; that was inside the fence I bought from her.

Q. Did you control and cultivate that land?

A. I broke it out the second year; all but a little bit that was too wet.

Q. Did you remain in control of it until you transferred your interest?

A. Yes, sir.

Q. Do you know how long Mr. Hill has been in possession of that?

A. He fenced it off the first day of last January. Had it fenced.

Q. You say you broke that land out?

A. Yes, sir.

Q. How long were you in control of it after that?

A. Three years. I got three crops off of it."

This testimony has reference to the eighty acres referred to by counsel for plaintiffs in error, and they certainly are in error when they say Tuttle, the guardian, and H. C. Campbell, grantors of Hill, were at all times in possession of the north half of the southeast quarter of Section Thirty-two, a portion of the lands in controversy, and involved in the contest of Harry F. Hill.

The fourth contention made by counsel is that neither Blasingame nor Reynolds were *bona fide* innocent purchasers of the possessory right to the land and improvements. We are at a loss to know just what counsel mean in speaking of *bona fide* purchasers of the possessory right of a piece of public domain, or Indian land for an allotment. We are also at a loss to know just how this ques-

tion could affect the rights of the parties in this litigation. If the defendants in error owned the improvements or had a better right to the improvements upon the land in question at the time of the allotment, then certainly under the law they had a right to take such lands in allotment, although they may have had knowledge of the fact that Campbell's heirs claimed some right or title to said land or that Hill claimed some right through Campbell's heirs. This, however, would not affect the rights of the contestees to take such land in allotment. Counsel have cited quite a number of cases to the effect that actual possession is notice to all the world of the possessor's title, and also to the effect that one who purchases *pendente lite* is not an innocent purchaser. Of course, we understand that as a general proposition this is the law everywhere, but it has no application to the questions now before the Court and needs no further consideration.

Counsel's fifth proposition raises a question of *res adjudicata*. The suit resulting in the judgment relied on as a bar was instituted in 1902 before the land was allotted and could only affect the possessory right to the land. At the time of the trial of the cause when judgment was rendered, patents through mistake and inadvertently, had been issued to the contestants, plaintiffs in error. That upon these patents judgment was recovered in their favor. Subsequently, in a suit instituted by the United States these patents were cancelled and the jurisdiction restored to the Land Department for final disposition of the land. We are, therefore, of the opinion that under such circumstances, the judgment rendered would not be *res adjudicata*. The Secretary refers to this matter in the first part of his opinion. There is another valid ground why this judgment could not be successfully pleaded as *res adjudicata*, for the reason the controversy there was between Dave Hill and C. A. Reynolds, neither of whom claim any interest in the lands now in controversy. The lands were selected in allotment by the minor heirs of C. A. Reynolds. They took

by virtue of being members of the Chickasaw tribe of Indians and not through their father; and they could not be said to be privy in estate with the said C. A. Reynolds. Again, we must say that we do not controvert the general proposition that where a court of general jurisdiction acquires jurisdiction over the subject matter and the parties and renders a judgment authorized that until reversed or vacated, it is conclusive between the parties and their privies. A similar state of facts are not now before the Court.

We feel that it would have been a sufficient answer to counsel's briefs for plaintiffs in error to have used the language of Mr. Justice Brewer in the case of *DeCambra v. Rogers*, 189 U. S. —, 47 L. Ed. 734, speaking for this Court, when he said:

"Under these circumstances, nothing is shown except an ordinary contest between two applicants for preemption, which the land officers upon the testimony decided in favor of one and against the other; but it is well settled that the decisions of the land department upon questions of fact are conclusive upon the courts."

The Secretary, in finally deciding the contest, said:

"In reviewing this case the Department has been particularly impressed with the failure of the contestants to show affirmatively a *superior right to the land*. The burden of establishing such right was upon them as plaintiffs, but they have failed to make a case in their behalf. Independently of such failure, *it is evident that to disturb the allotment made to the Reynolds children would not be right.*" (Italics ours.)

Or, in other words, the Secretary, in effect, held that there was a superior equity in favor of the contestees, defendants in error. It was said by this court in *Whitcomb v. White*, 214 U. S. 15, 53 L. Ed. 889, the Court speaking through Mr. Justice Brewer:

"The decision of the land department was not rested upon the fact that White's formal application was

filed a few hours before that of the trustees for the occupants of the townsite, but rather chiefly upon the *priority of the former's equitable rights. So far as this decision involves a question of fact, it is conclusive upon the courts.*" (Italics ours.)

It may be said with equal force that the decision of the Land Department in awarding the lands in question to the contestees was not rested solely upon the question of abandonment, but was also *based upon the superiority of the equity of said contestees.* The Secretary took into consideration the fact that the contestees and their assignors in good faith, openly, and with knowledge of the contestants, their assignors and guardian, put valuable and lasting improvements upon the premises in question, placed practically all the land in cultivation, maintaining exclusive possession and cultivating the same for several years prior to the time contestants attempted to secure any right. And whatever rights the contestants claim, or attempted to secure, was with full knowledge of the rights of the contestees. Of course all parties dealt with the land with knowledge of the fact that the title was jointly in the Chickasaw and Choctaw Nations, with plenary right in such Nations under the supervision of the Federal Government to dispose of the land to whomsoever they might choose. No property rights were or could have been secured in the property except in the manner provided by the Allotment Act. The decision of the Secretary of the Interior is not only in harmony with the general law, so far as that law is applicable, but comes within the rule of equity and right.

We respectfully submit that the judgment of the Supreme Court of Oklahoma should be affirmed.

Respectfully submitted,

F. E. RIDDLE, and

HARRY HAMMERLY,

*Attorneys for Defendants in Error.*